FEDERAL REGISTER

VOLUME 4 NUMBER 30

Washington, Tuesday, February 14, 1939

Rules, Regulations, Orders

TITLE 14—CIVIL AVIATION

CIVIL AERONAUTICS AUTHORITY

[Amendment 4]

AMENDMENT OF REGULATION 601–A–1[1] OF THE CIVIL AIR REGULATIONS RELATIVE TO EQUIPMENT

At a session of the Civil Aeronautics Authority held at its office in Washington, D. C., on the 10th day of February 1939.

Acting pursuant to the authority vested in it by the Civil Aeronautics Act of 1938, particularly Sections 205 (a) and 601 (a) of said Act, and finding that its action is desirable in the public interest and is necessary to carry out the provisions of, and to exercise and perform its powers and duties under said Act, the Civil Aeronautics Authority hereby amends the Civil Air Regulations as follows:

[Amendment No. 4 of Civil Air Regulations]

REQUIRING A MANUFACTURER'S AIRCRAFT OPERATING MANUAL WHEN REQUIRED BY THE APPROVED TYPE CERTIFICATE OR TYPE CERTIFICATE TO BE CARRIED IN THE AIRCRAFT AT ALL TIMES

Sec. 04.5 of the Civil Air Regulations is hereby amended by adding at the end thereof a new subsection 04.504:

"04.504 A manufacturer's aircraft operating manual, when required by the approved type certificate, type certificate, or approved specification which is part thereof, and when such manufacturer's aircraft operating manual has been approved by the Authority, shall be carried in the pilots' compartment at all times."

For the Authority:

[SEAL] PAUL J. FRIZZELL, *Secretary.*

[F. R. Doc. 39–535; Filed, February 13, 1939; 11:49 a. m.]

[1] 3 F. R. 2051 DI.

[Doc No 3398]

TITLE 16—COMMERCIAL PRACTICES

FEDERAL TRADE COMMISSION

IN THE MATTER OF PHILIP MORRIS & CO., LTD., INC.

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.* Selling, etc., in connection with offer, etc., in interstate commerce or in District of Columbia, of cigarets or any other merchandise, cigarets or other merchandise so packed, etc., that sales thereof to the public are to be, or may be, made by means of a lottery, etc., as specified, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Philip Morris & Co., Ltd., Inc., Docket 3398, January 31, 1939]

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.* Supplying, etc., dealers, in connection with offer, etc., in interstate commerce or in District of Columbia, of cigarets or any other merchandise, assortments of said cigarets or other merchandise, together with punch boards or other lottery devices which are to be, or may be, used in selling, etc., such cigarets, etc., to the public, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Philip Morris & Co., Ltd., Inc., Docket 3398, January 31, 1939]

SEC. 3.99 (b) *Using or selling lottery devices — In merchandising.* Supplying, etc., dealers, in connection with offer, etc.,

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in interstate commerce or in District of Columbia, of cigarets or any other merchandise, punch boards or other lottery devices either with assortments of said products or separately, which are to be, or may be, used in selling, etc., such cigarets, etc., to the public, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Philip Morris & Co., Ltd., Inc., Docket 3398, January 31, 1939]

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.* Selling, etc., in connection with offer, etc., in interstate comemrce or in District of Columbia, of cigarets or other merchandise, cigarets or other merchandise by use of punch boards, or other lottery devices, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Philip Morris & Co., Ltd., Inc., Docket 3398, January 31, 1939]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 31st day of January, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson,

Charles H. March, Ewin L. Davis, William A. Ayres.

ORDER TO CEASE AND DESIST

This proceeding having been heard [1] by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Philip Morris & Co., Ltd., Inc., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of cigarets or any other articles of merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing cigarets or any other merchandise so packed and assembled that sales of such cigarets or any other merchandise to the general public are to be made or may be made by means of a game of chance, gift enterprise or lottery scheme.

2. Supplying to, or placing in the hands of dealers, assortments of said cigarets or other merchandise together with punchboards or other lottery devices which said punchboard or other lottery devices are to be used or may be used in selling or distributing cigarets or other merchandise to the public.

3. Supplying to, or placing in the hands of dealers, punchboards or other lottery devices either with assortments of said products or separately, which punchboards or other lottery devices are to be used or may be used in selling or distributing cigarets or other merchandise to the public.

4. Selling, or otherwise disposing of, cigarets or other merchandise by the use of punchboards, or other lottery devices.

It is further ordered, That within sixty (60) days from the date of the service of this order upon said respondent, it shall file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39–496; Filed, February 10, 1939; 12: 59 p. m.]

[1] 3 F. R. 2708 DI.

[Docket No. 3419]

IN THE MATTER OF THE ENDURA CORPORATION

SEC. 3.6 (z) *Advertising falsely or misleadingly—Scientific tests:* SEC. 3.6 (dd 10) *Advertising falsely or misleadingly—Success, use or standing.* Representing, directly or indirectly, in connection with offer, etc., in commerce of "Endura" or "Endura Permanent Wave" cosmetic preparation, that respondent's preparation has been tested in world's foremost laboratories or that it is used in Hollywood's movie studios or by the screen's smartest stars, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, The Endura Corporation, Docket 3419, January 31, 1939]

SEC. 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product.* Representing, directly or indirectly, in connection with offer, etc., in commerce of "Endura" or "Endura Permanent Wave" cosmetic preparation, that respondent's preparation is actually good for the hair or will benefit bleached, dyed, gray or naturally colored hair, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, The Endura Corporation, Docket 3419, January 31, 1939]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 31st day of January, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

ORDER TO CEASE AND DESIST

This proceeding having been heard [1] by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and waives the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, The Endura Corporation, its representatives, agents and employees, in connection with the offering for sale, sale and distribution of a cosmetic preparation now known as "Endura" or as "Endura Permanent Wave," whether sold under those names or under any other names, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly representing:

1. That respondent's cosmetic preparation has been tested in the world's foremost laboratories or that it is used in Hollywood's movie studios or by the screen's smartest stars;

2. That respondent's cosmetic preparation is actually good for the hair or will benefit bleached, dyed, gray or naturally colored hair.

And it is hereby further ordered, That the said respondent shall within sixty (60) days from the date of service upon it of this order, file with this Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39–497; Filed, February 10, 1939; 12:59 p. m.]

[1] 3 F. R. 2265 DI.

[Docket No. 3430]

IN THE MATTER OF THE KNOX COMPANY

SEC. 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product.* Representing, in connection with offer, etc., in interstate commerce or in District of Columbia, of "Nixoderm" medicinal product, or of any other product with substantially same ingredients or properties, that said preparation constitutes an adequate remedy or cure for acne, psoriasis, eczema, pimples, dandruff, corns, or any other ailment or disorder manifested by diseased condition of skin, or constitutes competent or effective treatment therefor, unless limited to those cases of such disorders and ailments which are of surface character only and not caused by, or associated with, a systemic or metabolic disorder; or that said preparation constitutes an adequate remedy or cure for all cases of acne, psoriasis, eczema, pimples, or other skin ailments and disorders which are of a surface character only, or constitutes a competent and effective treatment therefor; prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, The Knox Company, Docket 3430, January 31, 1939]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 31st day of January, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, The Knox Company, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of a medicinal product now designated "Nixoderm" or of any other medicinal product containing substantially the same ingredients, or possessing the same properties, whether sold under that name or any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that said preparation constitutes an adequate remedy or cure for acne, psoriasis, eczema, pimples, dandruff, corns, or any other ailment or disorder manifested by a diseased condition of the human skin, or constitutes a competent or effective treatment therefor, unless such representations are limited to those cases of such disorders and ailments which are of a surface character only and not caused by, or associated with, a systemic or metabolic disorder.

2. Representing that said preparation constitutes an adequate remedy or cure for all cases of acne, psoriasis, eczema, pimples, or other skin ailments and disorders which are of a surface character only, or constitutes a competent and effective treatment therefor.

It is further ordered, That the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39-498; Filed, February 10, 1939; 12:59 p. m.]

[Docket No. 3262]

IN THE MATTER OF MORETRENCH CORPORATION

SEC. 3.6 (b) (2) *Advertising falsely or misleadingly — Competitors and their products—Competitors' products:* SEC. 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* SEC. 3.48 (b) (5) *Disparaging competitors and their products—Goods—Performance.* Disparaging, in connection with offer, etc., in interstate commerce or in District of Columbia, of wellpoints and wellpoint systems, competitive products, through representations, on basis different methods of calculation, that the unobstructed water-passing screen area of competitive wellpoints is smaller than that of its own, or through representations that its wellpoints, equiped with two valves, are superior to competitive wellpoints equipped with one, when respective points are constructed on different mechanical principles, or representing that one of its wellpoints is equal to any given number of any competitive wellpoints, goes down much easier and never clogs up, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Moretrench Corporation, Docket 3262, February 6, 1939]

SEC. 3.6 (a 10) *Advertising falsely or misleadingly—Comparative data:* SEC. 3.6 (b) (2) *Advertising falsely or misleadingly—Competitors and their products—Competitors' products:* SEC. 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* SEC. 3.48 (b) (5) *Disparaging competitors and their products — Goods — Performance.* Representing, in connection with offer, etc., in interstate commerce or in District of Columbia, of wellpoints and wellpoint systems, that contractors all over the world testify that operation costs of respondent's wellpoints are always 50%, or any other set percentage, lower than those of competitive products, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Moretrench Corporation, Docket 3262, February 6, 1939]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 6th day of February, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

ORDER TO CEASE AND DESIST

This proceeding having been heard [1] by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by William L. Pencke, counsel for the Commission, and by Samuel J. Reid, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Moretrench Corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of wellpoints and wellpoint systems in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Disparaging competitive products through representations that the unobstructed water-passing screen area of competitive well points is smaller than that of its own well points, which representations are based on the use of different methods of calculation, or through representations that its well points equipped with two valves are superior to competitive well points equipped with one valve when the respective well points are constructed on different mechanical principles.

2. Representing that one of its wellpoints is equal to any given number of any competitive wellpoints, goes down much easier and never clogs up.

3. Representing that contractors all over the world testify that operation costs of respondent's wellpoints are always 50% or any other set percentage lower than those of competitive products.

It is further ordered, That the respondent shall within sixty days after

[1] 3 F. R. 546 DI.

service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39-520; Filed, February 13, 1939; 9:41 a. m.]

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

AMENDMENT OF RULE S-121

The Securities and Exchange Commission, acting pursuant to the authority conferred upon it by the Securities Act of 1933, as amended, and particularly Sections 6 (d) and 19 (a) thereof, and deeming such action necessary and appropriate in the public interest and for the protection of investors, hereby amends Rule S-121 [Sec. 5.S-121] of the General Rules and Regulations to read as follows:

SEC. 5.S-121 (Rule S-121). *Sale of Copies of Registered Information.*—(a) Photocopies of any material filed with the Commission and available for public inspection will be sold to the public at the following rates per photocopy, except as provided in (c), whether several copies of a single original page or one or more copies of several original pages are ordered: 10 cents per photocopy of each page, for all copies up to and including 100 in a single order; 7 cents per photocopy of each page, for all copies over 100 in a single order.

(b) Estimates as to prices for copies and the time required for their preparation will be furnished upon request. Payment shall accompany the order, if practicable. If an order is received and insufficient or no payment accompanies it, the material will be photocopied and the party making the order will be billed.

(c) Photocopies of Registration Record Reference Cards will be sold to the public at 25 cents per copy of the record of any single registration statement, regardless of the number of photocopy pages which comprise such record at the time such photocopy is furnished.

(d) Payment shall be made in cash, or by United States postal money order or certified bank check payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. Postage stamps will not be accepted.

Effective February 13, 1939.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-534; Filed, February 13, 1939; 11:35 a. m.]

TITLE 19—CUSTOMS DUTIES

BUREAU OF CUSTOMS

[T. D. 49796]

CUSTOMS REGULATIONS AMENDED—MAIL IMPORTATIONS

MAIL ARTICLES RECEIVED IN DAMAGED CONDITION OR SHORT OF CONTENTS

FEBRUARY 6, 1939.

To Collectors of Customs and Others Concerned:

Pursuant to the authority contained in section 498 (a) (1) of the Tariff Act of 1930 (U. S. C. title 19, sec. 1498 (a) (1)), and section 161 of the Revised Statutes (U. S. C. title 5, sec. 22), the Customs Regulations of 1937 are amended as follows:

Article 371 (b) [1] is amended to read:

(b) (J. R. 11b). Immediately after customs treatment, all sealed articles (other than parcel post) except those which are opened by or in the presence of the addressee and delivered at the time of such opening, shall be securely repacked and resealed by a postal employee, in the presence of the customs employee who participated in the opening, so that the article will be in the same condition as when opened or in a better condition. Where practicable, each article shall be reenclosed in a special Post Office Department penalty envelope, readdressed and resealed by the postal employees. Articles too large to be enclosed in the special penalty envelope, as well as articles of nominal value, shall be resealed by the use of adhesive tape, mucilage or wax, and the official adhesive seal of the Post Office Department. The postal employee shall sign or initial the envelope or wrapper covering each article repacked and resealed by him; and in case the article is found to be in bad order shall, after bringing the matter to the attention of the customs employee, note on the cover of the article over his signature, a report of the irregularity.

Article 374 (a) and (b) [2] is amended to read:

(a) (J. R. 14a). Postal and customs employees shall exercise proper care in examining and repacking the contents of parcels handled by them, particularly those parcels containing delicate instruments, articles of glass, china, and other fragile articles, liquids and easily liquefiable substances, to see that such are repacked in the same condition in which they were found when the parcel was opened or in better condition. All original tags, wrappers, labels, customs declarations, and other enclosures shall be repacked with the contents of the parcel. When mail parcels have been placed in customs custody for examination, postal employees upon accepting the parcels from customs shall satisfy themselves that each parcel is securely repacked and rewrapped (both as to contents and coverings) in condition safely to bear handling and onward transportation in the mails. When, in the judgment of the postal employee, a parcel is not in condition to bear without damage subsequent handling in the postal service, it shall be placed in satisfactory condition jointly by the postal and customs employees involved. When it can be shown that the parcel or its contents suffered damage as the result of negligence or improper handling, the employee at fault will be held personally responsible for the damage.

(b) (J. R. 14b). When a damaged or rifled parcel reaches a customs employee, a damage slip, customers Form 6423, or a shortage slip, customs Form 6425, as the occasion may require, containing a report of the irregularity, shall be enclosed with the contents, and written report made promptly to the postmaster. The damage or rifling shall be taken into account in the appraisement of the merchandise and assessment of duty. When a damaged or rifled parcel is received by the postal employee, he shall note on the address side thereof the nature and extent of the irregularity, followed by his signature.

RAMSEY S. BLACK,
Acting Postmaster General.

[SEAL] STEPHEN B. GIBBONS,
Acting Secretary of the Treasury.

[F. R. Doc. 39-508; Filed, February 11, 1939; 11:32 a. m.]

[1] 2 F. R. 1528 (1814 DI).

[2] 2 F. R. 1529 (1815 DI).

TITLE 26—INTERNAL REVENUE

BUREAU OF INTERNAL REVENUE

[Regulations 101]

INCOME TAX UNDER THE REVENUE ACT OF 1938

[*The Table of Contents and Chapters I–IX appeared in the "Federal Register" for Friday, February 10, 1939. Chapters X–XXXIII appeared in the "Federal Register" for Saturday, February 11, 1939.*]

CHAPTER XXXIV

Foreign Personal Holding Companies

Supplement P—Foreign Personal Holding Companies

SEC. 331. *Definition of foreign personal holding company.*—(a) *General rule.*—For the purposes of this title the term "foreign personal holding company" means any foreign corporation if—

(1) *Gross income requirement.*—At least 60 per centum of its gross income (as defined in section 334 (a)) for the taxable year is foreign personal holding company income as defined in section 332; but if the corporation is a foreign personal holding company with respect to any taxable year ending after August 26, 1937, then for each subsequent taxable year, the minimum percentage shall be 50 per centum in lieu of 60 per centum, until a taxable year during the whole of which the stock ownership required by paragraph (2) does not exist, or until the expiration of three consecutive taxable years in each of which less than 50 per centum of the gross income is foreign personal holding company income. For the purposes of this paragraph there shall be included in the gross income the amount includible therein as a dividend by reason of the application of section 334 (c) (2); and

(2) *Stock ownership requirement.*—At any time during the taxable year more than 50 per centum in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals who are citizens or residents of the United States, hereinafter called "United States group".

(b) *Exceptions.*—The term "foreign personal holding company" does not include a corporation exempt from taxation under section 101.

ART. 331–1. *Definition of foreign personal holding company.*—A foreign personal holding company is any foreign corporation (other than a corporation exempt from taxation under section 101) which for the taxable year meets (*a*) the gross income requirements specified in article 331–2, and (*b*) the stock ownership requirement specified in article 331–3. Both requirements must be satisfied and both must be met with respect to each taxable year.

A foreign corporation which comes within the classification of a foreign personal holding company for any taxable year beginning after December 31, 1937, is not subject to taxation for such taxable year either under section 102 or section 401 but may be subject to taxation under either of those sections for other taxable years. The fact that a foreign corporation is a foreign personal holding company does not relieve the corporation from liability for the taxes imposed generally under section 231 upon foreign corporations, since such taxes apply regardless of the classification of the foreign corporation as a foreign personal holding company.

ART. 331–2. *Gross income requirement.*—To meet the gross income requirement, it is necessary that either of the following percentages of gross income of the corporation for the taxable year (including the additions to gross income provided in seection 334 (b) as required by seection 334 (c) (2)) be foreign personal holding company income as defined in section 332:

(*a*) 60 percent or more; or

(*b*) 50 percent or more if the foreign corporation has been classified as a foreign personal holding company for any taxable year ending after August 26, 1937, unless—

(1) a taxable year has intervened since the last taxable year for which it was so classified, during no part of which the stock ownership requirement specified in section 331 (a) (2) exists; or

(2) three consecutive years have intervened since the last taxable year for which it was so classified, during each of which its foreign personal holding company income was less than 50 percent of its gross income.

In determining whether the foreign personal holding company income is equal to the required percentage of the total gross income, the determination must not be made upon the basis of gross receipts, since gross income is not synonymous with gross receipts. For a further discussion of what constitutes "gross income," see section 22 (a) and the regulations prescribed under that section.

ART. 331–3. *Stock ownership requirement.*—To meet the stock ownership requirement, it is necessary that at some time in the taxable year more than 50 percent in value of the outstanding stock of the foreign corporation be owned, directly or indirectly, by or for not more than five individuals who are citizens or residents of the United States, hereinafter referred to as "United States group." For such purpose, the ownership of the stock must be determined as provided in section 333 and articles 333 (a)–1 to 333 (a)–7 and article 333 (b)–1.

In the event of any change in the stock outstanding during the taxable year, whether in the number of shares or classes of stock, or whether in the ownership thereof, the conditions existing immediately prior and subsequent to each change must be taken into consideration, since a corporation comes within the classification if the statutory conditions with respect to stock ownership are present *at any time* during the taxable year.

In determining whether the statutory conditions with respect to stock ownership are present at any time during the taxable year, the phrase "in value" shall, in the light of all the circumstances, be deemed the value of the corporate stock outstanding at such time (not including treasury stock). This value may be determined upon the basis of the company's net worth, earning and dividend paying capacity, appreciation of assets, together with such other factors as have a bearing upon the value of the stock. If the value of the stock which is used is greatly at variance with that reflected by the corporate books, the evidence of such value should be filed with the return. In any case where there are two or more classes of stock outstanding, the total value of all the stock should be allocated among the different classes according to the relative value of each class therein.

SEC. 332. *Foreign personal holding company income.*—For the purposes of this title the term "foreign personal holding company income" means the portion, of the gross income determined for the purposes of section 331 (a) (1), which consists of:

(*a*) Dividends, interest, royalties, annuities,

(*b*) *Stock and securities transactions.*—Except in the case of regular dealers in stock or securities, gains from the sale or exchange of stock or securities.

(*c*) *Commodities transactions.*—Gains from futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange. This subsection shall not apply to gains by a producer, processor, merchant, or handler of the commodity which arise out of bona fide hedging transactions reasonably necessary to the conduct of its business in the manner in which such business is customarily and usually conducted by others.

(*d*) *Estates and trusts.*—Amounts includible in computing the net income of the corporation under Supplement E; and gains from the sale or other disposition of any interest in an estate or trust.

(*e*) *Personal service contracts.*—(1) Amounts received under a contract under which the corporation is to furnish personal services; if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and (2) amounts received from the sale or other disposition of such a contract. This subsection shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(*f*) *Use of corporation property by shareholder.*—Amounts received as compensation (however designated and from whomsoever received) for the use of, or right to use, property of the corporation in any case where, at any time during the taxable year, 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for an individual entitled to the use of the property; whether such right is obtained directly from the corporation or by means of a sublease or other arrangement.

(*g*) *Rents.*—Rents, unless constituting 50 per centum or more of the gross income. For the purposes of this subsection the term "rents" means compensation, however designated, for the use of, or right to use, property; but does not include amounts constituting foreign personal holding company income under subsection (f).

ART. 332–1. *Foreign personal holding company income.*—For the purposes of Supplement P and these regulations the

term "foreign personal holding company income" means the portion of the gross income determined for the purposes of section 331 (a) (1) and article 331–2 which consists of the following:

(1) *Dividends.*—The term "dividends" includes dividends as defined in section 115 (a) and amounts required to be included in gross income under section 334 (b). It does not include stock dividends (to the extent they do not constitute income to the shareholders within the meaning of the sixteenth amendment to the Constitution), liquidating dividends, or other capital distributions referred to in section 115 (c) and (d).

(2) *Interest.*—The term "interest" means any amounts, includible in gross income, received for the use of money loaned.

(3) *Royalties.*—The term "royalties" includes amounts received for the privilege of using patents, copyrights, secret processes and formulas, good will, trade marks, trade brands, franchises, and other like property. It does not include rents, or overriding royalties received by an operating company. As used in this paragraph the term "overriding royalties" means amounts received from the sublessee by the operating company which originally leased and developed the natural resource property in respect of which such overriding royalties are paid.

(4) *Annuities.*—The term "annuities" includes annuities only to the extent includible in the computation of gross income. (See section 22 (b) (2).)

(5) *Gains from the sale or exchange of stock or securities.*—The term "gains from the sale or exchange of stock or securities" as used in section 332 (b) applies to all gains (including gains from liquidating dividends and other distributions from capital) from the sale or exchange of stock or securities includible in gross income. The term "stock or securities" as used in section 332 (b) includes shares or certificates of stock, or interest in any corporation (including any joint-stock company, insurance company, association, or other organization classified as a corporation by the Act), certificates of interest or participation in any profit-sharing agreement, or in any oil, gas, or other mineral royalty, or lease, collateral trust certificates, voting trust certificates, stock rights or warrants, bonds, debentures, certificates of indebtedness, notes, car trust certificates, bills of exchange, obligations issued by or on behalf of a Government, State, Territory, or political subdivision thereof. In the case of "regular dealers in stock or securities" the term does not include gains derived from the sale or exchange of stock or securities made in the normal course of business. The term "regular dealers in stock or securities" as used in section 332 (b) means corporations with an established place of business regularly engaged in the purchase of stock or securities and their resale to customers, but such corporations are not dealers with respect to stock or securities held for speculation or investment.

(6) *Gains from futures transactions in commodities.*—Gains from futures transactions in commodities include gains from futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange, but do not include gains from cash transactions or gains by a producer, processor, merchant, or handler of the commodity, which arise out of bona fide hedging transactions reasonably necessary to the conduct of its business in the manner in which such business is customarily and usually conducted by others. In general, foreign personal holding company income includes gains on futures contracts which are speculative. Futures contracts representing true hedges against price fluctuations in spot goods are not speculative transactions, though not concurrent with spot transactions. Futures contracts which are not hedges against spot transactions are speculative unless they are hedges against concurrent futures or forward sales or purchases.

(7) *Income from estates and trusts.*—The income from estates and trusts which is to be included in foreign personal holding company income consists of the income from estates and trusts which is required to be included in the gross income of the corporation under sections 161 to 169, together with the gains derived by the corporation from the sale or other disposition of any interest in an estate or trust.

(8) *Amounts received under personal service contracts.*—Amounts includible in foreign personal holding company income as amounts received under personal service contracts consist of amounts received pursuant to a contract under which the corporation is to furnish personal services, and amounts received from a sale or other disposition of such a contract, if—

(*a*) Some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description in the contract); and

(*b*) at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description), as the one to perform such services. For this purpose the stock ownership must be determined as provided in section 333 and articles 333 (a)–1 to 333 (a)–7 and article 333 (b)–1.

The application of section 332 (e) may be illustrated by the following examples:

Example (1): A, whose profession is that of an actor, owns all of the outstanding capital stock of the M Corporation, a foreign corporation. The M Corporation entered into a contract with A under which A was to perform personal services for the person or persons which the M Corporation might designate, in consideration of which A was to receive $10,000 a year from the M Corporation. The M Corporation entered into a contract with the O Corporation in which A was designated to perform personal services for the O Corporation, in consideration of which the O Corporation was to pay the M Corporation $500,000 a year. The $500,000 received by the M Corporation from the O Corporation constitutes foreign personal holding company income.

Example (2): The N Corporation, a foreign corporation, the entire outstanding capital stock of which is owned by four individuals, is engaged in engineering. The N Corporation entered into a contract with the O Corporation to perform engineering services for the O Corporation, in consideration of which the O Corporation was to pay the N Corporation $50,000. The individual who was to perform the services was not designated (by name or by description) in the contract and no one but the N Corporation had the right to designate (by name or by description) such individual. The $50,000 received by the N Corporation from the O Corporation does not constitute foreign personal holding company income.

(9) *Compensation for use of property.*—The compensation for the use of, or the right to use, property of the corporation which is to be included in foreign personal holding company income consists of amounts received as compensation (however designated and from whomsoever received) for the use of, or the right to use, property of the corporation in any case in which, at any time during the taxable year, 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for an individual entitled to the use of the property, whether such right is obtained directly from the corporation or by means of a sublease or other arrangement. The property may consist of a yacht, a city residence, a country house, or any other kind of property. See sections 331 (a) (2) and 333 and articles 333 (a)–1 to 333 (a)–7 and article 333 (b)–1.

(10) *Rents.*—The rents which are to be included in foreign personal holding company income consist of compensation, however designated, including charter fees, etc., for the use of, or the right to use, real property, or any other kind of property, but do not include amounts constituting foreign personal holding company income under section 332 (f) and paragraph (9) of this article. However, rents do not constitute foreign personal holding company in-

come if constituting 50 percent or more of the gross income of the corporation.

SEC. 333. *Stock ownership.*—(*a*) *Constructive ownership.*—For the purpose of determining whether a foreign corporation is a foreign personal holding company, insofar as such determination is based on stock ownership under section 331 (a) (2), section 332 (e), or section 332 (f)—

(1) *Stock not owned by individual.*—Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

(2) *Family and partnership ownership.*—An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For the purposes of this paragraph the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(3) *Options.*—If any person has an option to acquire stock such stock shall be considered as owned by such person. For the purposes of this paragraph an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(4) *Application of family-partnership and option rules.*—Paragraphs (2) and (3) shall be applied—

(A) For the purposes of the stock ownership requirement provided in section 331 (a) (2), if, but only if, the effect is to make the corporation a foreign personal holding company;

(B) For the purposes of section 332 (e) (relating to personal service contracts), or of section 332 (f) (relating to the use of property by shareholders), if, but only if, the effect is to make the amounts therein referred to includible under such subsection as foreign personal holding company income.

(5) *Constructive ownership as actual ownership.*—Stock constructively owned by a person by reason of the application of paragraph (1) or (3) shall, for the purpose of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for the purpose of again applying such paragraph in order to make another the constructive owner of such stock.

(6) *Option rule in lieu of family and partnership rule.*—If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

ART. 333 (a)–1. *Stock ownership.*—For the purpose of determining whether—

(*a*) a foreign corporation is a foreign personal holding company, in so far as such determination is based on the stock ownership requirement specified in section 331 (a) (2) and article 331–3, or

(*b*) amounts received under a personal service contract or from the sale of such a contract constitute foreign personal holding company income in so far as such determination is based on the stock ownership requirement specified in section 332 (e) and paragraph (8) of article 332–1, or

(*c*) compensation for the use of property constitutes foreign personal holding company income in so far as such determination is based on the stock ownership requirement specified in section 332 (f) and paragraph (9) of article 332–1,

stock owned by an individual includes stock constructively owned by him as provided in section 333. For such purpose constructive ownership of stock shall be determined and applied in accordance with the rules provided in section 333 and articles 333 (a)–2 to 333 (a)–7 and article 333 (b)–1. All forms and classes of stock, however denominated, which represent the interests of shareholders, members, or beneficiaries in the corporation shall be taken into consideration.

ART. 333 (a)–2. *Stock not owned by individual.*—In determining the ownership of stock for any of the purposes set forth in article 333 (a)–1, stock owned directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries. For example, if A and B, two individuals, are the exclusive and equal beneficiaries of a trust or estate, and if such trust or estate owns the entire capital stock of the M Corporation, and if the M Corporation in turn owns the entire capital stock of the N Corporation, then the stock of both the M Corporation and the N Corporation shall be considered as being owned equally by A and B as the individuals owning the beneficial interest therein. See also article 333 (a)–6.

ART. 333 (a)–3. *Family and partnership ownership.*—In determining the ownership of stock for any of the purposes set forth in article 333 (a)–1, an individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For the purposes of such determination the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

The application of the family and partnership rule in determining the ownership of stock for the purpose set forth in (*a*) of article 333 (a)–1 is illustrated by the following example:

Example: The M Corporation at some time during the taxable year had 1,800 shares of outstanding stock, 450 of which were held by various individuals having no relationship to one another and none of whom were partners, and the remaining 1,350 were held by 51 shareholders as follows:

Relationships	Shares		Shares		Shares		Shares		Shares	
An individual	A	100	B	20	C	20	D	20	E	20
His father	AF	10	BF	10	CF	10	DF	10	EF	10
His wife	AW	10	BW	40	CW	40	DW	40	EW	40
His brother	AB	10	BB	10	CB	10	DB	10	EB	10
His son	AS	10	BS	40	CS	40	DS	40	ES	40
His daughter by former marriage (son's half-sister)	ASHS	10	BSHS	40	CSHS	40	DSHS	40	ESHS	40
His brother's wife	ABW	10	BBW	10	CBW	10	DBW	160	EBW	10
His wife's father	AWF	10	BWF	10	CWF	110	DWF	10	EWF	10
His wife's brother	AWB	10	BWB	10	CWB	10	DWB	10	EWB	10
His wife's brother's wife	AWBW	10	BWBW	10	CWBW	10	DWBW	10	EWBW	110
Individual's partner	AP	10								

By applying the statutory rule provided in section 333 (a) (2) five individuals own more than 50 percent of the outstanding stock as follows:

A (including AF, AW, AB, AS, ASHS, AP)	160
B (including BF, BW, BB, BS, BSHS)	160
CW (including C, CS, CWF, CWB)	220
DB (including D, DF, DBW)	200
EWB (including EW, EWF, EWBW)	170
Total, or more than 50 percent	910

Individual A represents the obvious case where the head of the family owns the bulk of the family stock and naturally is the head of the group. A's partner owns 10 shares of the stock. Individual B represents the case where he is still head of the group because of the ownership of stock by his immediate family. Individuals C and D represent cases where the individuals fall in groups headed in C's case by his wife and in D's case by his brother because of the preponderance of holdings on the part of relatives by marriage. Individual E represents the case where the preponderant holdings of others eliminate that individual from the group.

The method of applying the family and partnership rule as illustrated in the foregoing example also applies in determining the ownership of stock for the purposes stated in (*b*) and (*c*) of article 333 (a)–1.

ART. 333 (a)–4. *Options.*—In determining the ownership of stock for any of the purposes set forth in article 333 (a)–1, if any person has an option to acquire stock, such stock may be considered as owned by such person. The term "option" as used in this article includes an option to acquire such an option and each one of a series of such options, so that the person who has an option on an option to acquire stock may be considered as the owner of the stock.

ART. 333 (a)–5. *Application of family-partnership and option rules.*—The family and partnership rule provided in section 333 (a) (2) and article 333 (a)–3 and the option rule provided in section 333 (a) (3) and article 333 (a)–4 shall be applied—

(*a*) for the purpose stated in (*a*) of article 333 (a)–1, if, but only if, the effect of such application is to make the foreign corporation a foreign personal holding company, or

(*b*) for the purpose stated in (*b*) of article 333 (a)–1, if, but only if, the effect of such application is to make the

amounts received under a personal service contract or from the sale of such a contract foreign personal holding company income, or

(*c*) for the purpose stated in (c) of article 333 (a)–1, if, but only if, the effect of such application is to make the compensation for the use of property foreign personal holding company income.

The family and partnership rule and the option rule must be applied independently for each of the purposes stated in article 333 (a)–1.

ART. 333 (a)–6. *Constructive ownership as actual ownership.*—In determining the ownership of stock for any of the purposes set forth in article 333 (a)–1—

(*a*) stock constructively owned by a person by reason of the application of the rule provided in section 333 (a) (1) relating to stock not owned by an individual (see article 333 (a)–2 shall be considered as actually owned by such person for the purpose of again applying such rule or of applying the family and partnership rule provided in section 333 (a) (2) (see article 333 (a)–3) in order to make another person the constructive owner of such stock, and

(*b*) stock constructively owned by a person by reason of the application of the option rule provided in section 333 (a) (3) (see article 333 (a)–4) shall be considered as actually owned by such person for the purpose of applying either the rule provided in section 333 (a) (1), relating to stock not owned by an individual, or the family and partnership rule provided in section 333 (a) (2) in order to make another person the constructive owner of such stock, but

(*c*) stock constructively owned by an individual by reason of the application of the family and partnership rule provided in section 333 (a) (2) shall not be considered as actually owned by such individual for the purpose of again applying such rule in order to make another individual the constructive owner of such stock.

The application of this article may be illustrated by the following examples:

Example (1): A is a United States citizen, whose wife, AW, owns all of the stock of the M Corporation, which in turn owns all the stock of the O Corporation. The O Corporation in turn owns all the stock in the P Corporation.

Under the rule provided in section 333 (a) (1), relating to stock not owned by an individual, the stock in the P Corporation owned by the O Corporation is considered to be owned constructively by the M Corporation, the sole shareholder of the O Corporation. Such constructive ownership of the stock by the M Corporation is considered as actual ownership for the purpose of again applying such rule in order to make AW, the sole shareholder of the M Corporation, the constructive owner of the stock of the P Corporation. Similarly, the constructive ownership of the stock by AW is considered as actual ownership for the purpose of applying the family and partnership rule provided in section 333 (a) (2) in order to make A the constructive owner of the stock of the P Corporation, if such application is necessary for any of the purposes set forth in article 333 (a)–1. But the stock thus constructively owned by A may not be considered as actual ownership for the purpose of again applying the family and partnership rule in order to make another member of A's family, for example A's father, the constructive owner of the stock of the P Corporation.

Example (2): B is a United States citizen who owns all the stock of the R Corporation which has an option to acquire all the stock of the S Corporation, a foreign corporation, owned by C, an individual, who is not related to B.

Under the option rule provided in section 333 (a) (3) the R Corporation may be considered as owning constructively the stock of the S Corporation owned by C. Such constructive ownership of the stock by the R Corporation is considered as actual ownership for the purpose of applying the rule provided in section 333 (a) (1), relating to stock not owned by an individual, in order to make B, the sole shareholder of the R Corporation, the constructive owner of the stock of the S Corporation. The stock thus constructively owned by B by reason of the application of the rule provided in section 333 (a) (1) likewise is considered as actual ownership for the purpose, if necessary, of applying the family and partnership rule provided in section 333 (a) (2), in order to make another member of B's family, for example, B's wife, BW, the constructive owner of the stock of the S Corporation. However, the family and partnership rule could not again be applied so as to make still another individual the constructive owner of the stock of the S. Corporation, that is, the stock constructively owned by BW could not be considered as actually owned by her in order to make BW's father the constructive owner of such stock by a second application of the family and partnership rule.

ART. 333 (a)–7. *Option rule in lieu of family and partnership rule.*—If, in determining the ownership of stock for any of the purposes set forth in article 333 (a)–1, stock may be considered as constructively owned by an individual by an application of both the family-partnership rule provided in section 333 (a) (2) (see article 333 (a)–3) and the option rule provided in section 333 (a) (3) (see article 333 (a)–4) such stock shall be considered as owned constructively by the individual by reason of the application of the option rule.

The application of this article may be illustrated by the following example:

Example: Two brothers, A and B, each own 10 percent of the stock of the M Corporation, a foreign corporation, and A's wife, AW, also owns 10 percent of the stock of such corporation. AW's husband, A, has an option to acquire the stock owned by her at any time. It becomes necessary, for one of the purposes stated in article 333 (a)–1, to determine the stock ownership of B in the M Corporation.

If the family and partnership rule were the only rule that applied in the case, B would be considered, under that rule, as owning 20 percent of the stock of the M Corporation, namely, his own stock plus the stock owned by his brother. In that event, B could not be considered as owning the stock held by AW since (1) AW is not a member of B's family and (2) the constructive ownership of such stock by A through the application of the family and partnership rule in his case is not considered as actual ownership so as to make B the constructive owner by a second application of the same rule with respect to the ownership of the stock. (See article 333 (a)–6.)

However, there is more than the family and partnership rule involved in this example. As the holder of an option upon the stock, A may be considered the constructive owner of his wife's stock by the application of the option rule and without reference to the family relationship between A and AW. If A is considered as owning the stock of his wife by application of the option rule, then under article 333 (a)–6, such constructive ownership by A is regarded as actual ownership for the purpose of applying the family and partnership rule so as to make another member of A's family, for example, B, the constructive owner of the stock. Hence, since A may be considered as owning his wife's stock by applying both the family-partnership rule and the option rule, the provisions of section 333 (a) (6) apply and accordingly A must be considered the constructive owner of his wife's stock under the option rule rather than the family-partnership rule. B thus becomes the constructive owner of 30 percent of the stock of the M Corporation, namely, his own 10 percent, A's 10 percent, and AW's 10 percent constructively owned by A as the holder of an option on the stock.

[SEC. 333. *Stock ownership.*]

(*b*) *Convertible securities.*—Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock—

(1) For the purpose of the stock ownership requirement provided in section 331 (a) (2), but only if the effect of the inclusion of all such securities is to make the corporation a foreign personal holding company;

(2) For the purpose of section 332 (e) (relating to personal service contracts), but only if the effect of the inclusion of all such securities is to make the amounts

therein referred to includible under such subsection as foreign personal holding company income; and

(3) For the purpose of section 332 (f) (relating to the use of property by shareholders), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such subsection as foreign personal holding company income.

The requirement in paragraphs (1), (2), and (3) that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included.

ART. 333 (b)-1. *Convertible securities.*—Under section 333 (b), outstanding securities of a foreign corporation, such as bonds, debentures, or other corporate obligations, convertible into stock of the corporation (whether or not convertible during the taxable year) shall be considered as outstanding stock of the corporation for the purpose of the stock ownership requirement provided in section 331 (a) (2), but only if the effect of such consideration is to make the corporation a foreign personal holding company. Such convertible securities shall be considered as outstanding stock for the purpose of section 332 (e), relating to amounts received under personal service contracts, or of section 332 (f), relating to compensation for the use of property, but only if the effect of such consideration is to make the amounts therein referred to includible under such sections as foreign personal holding company income. The consideration of convertible securities as outstanding stock is subject to the exception that, if some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be considered as outstanding stock although the others are not so considered, but no convertible securities shall be considered as outstanding stock unless all outstanding securities having a prior conversion date are also so considered. For example, if outstanding securities are convertible in 1938, 1939, and 1940, those convertible in 1938 can be properly considered as outstanding stock without so considering those convertible in 1939 or 1940, and those convertible in 1938 and 1939 can be properly considered as outstanding stock without so considering those convertible in 1940. However, the securities convertible in 1939 could not be properly considered as outstanding stock without so considering those convertible in 1938 and the securities convertible in 1940 could not be properly considered as outstanding stock without so considering those convertible in 1938 and 1939.

SEC. 334. *Gross income of foreign personal holding companies.*—(a) *General rule.*—As used in this Supplement with respect to a foreign corporation the term "gross income" means gross income computed (without regard to the provisions of Supplement I) as if the foreign corporation were a domestic corporation.

(b) *Additions to gross income.*—In the case of a foreign personal holding company (whether or not a United States group, as defined in section 331 (a) (2), existed with respect to such company on the last day of its taxable year) which was a shareholder in another foreign personal holding company on the day in the taxable year (whether beginning before, on or after January 1, 1938) of the second company which was the last day on which a United States group existed with respect to the second company, there shall be included, as a dividend, in the gross income of the first company, for the taxable year in which or with which the taxable year of the second company ends, the amount the first company would have received as a dividend if on such last day there had been distributed by the second company, and received by the shareholders, an amount which bears the same ratio to the undistributed Supplement P net income of the second company for its taxable year as the portion of such taxable year up to and including such last day bears to the entire taxable year.

(c) *Application of subsection (b).*—The rule provided in subsection (b)—

(1) shall be applied in the case of a foreign personal holding company for the purpose of determining its undistributed Supplement P net income which, or a part of which, is to be included in the gross income of its shareholders, whether United States shareholders or other foreign personal holding companies;

(2) shall be applied in the case of every foreign corporation with respect to which a United States group exists on some day of its taxable year, for the purpose of determining whether such corporation meets the gross income requirements of section 331 (a) (1).

ART. 334-1. *Gross income in general for purposes of Supplement P.*—For all purposes of Supplement P and Chapter XXXIV of these regulations, the gross income of a foreign corporation shall be computed as if the corporation were a domestic corporation and without regard to the provisions of Supplement I and Chapter XXVII of these regulations, relating to the taxation of foreign corporations generally. Hence, for such purposes, the gross income includes income from all sources, whether within or without the United States, which is not excluded from gross income by section 22 (b) and the regulations pertaining to that section. The gross income thus includes the interest on bonds, notes, and certificates of indebtedness of the United States, even though owned beneficially by a foreign corporation not engaged in trade or business in the United States, and even though such interest otherwise would come within the exemption provided for in section 3 of the Fourth Liberty Bond Act of July 9, 1918, as amended by section 4 of the Victory Liberty Loan Act of March 3, 1919.

ART. 334-2. *Additions to gross income for purposes of Supplement P.*—If, for any taxable year—

(a) a foreign corporation meets the stock ownership requirement specified in article 331-3, regardless of whatever day in its taxable year is the last day on which the required United States group exists, and

(b) such foreign corporation is a shareholder in a foreign personal holding company on any day of a taxable year (whether beginning before, on or after January 1, 1938) of the second company which ends with or within the taxable year of the first company and such day is the last day in the taxable year of the second company on which the United States group exists with respect to the second company,

then for the purpose of—

(c) determining whether the first company meets the gross income requirement specified in article 331-2, so as to come within the classification of a foreign personal holding company, and

(d) determining the undistributed Supplement P net income of the first company which (in the event the first company is a foreign personal holding company) is to be included, in whole or in part, in the gross income of its shareholders, whether United States shareholders or other foreign personal holding companies.

there shall be included as a dividend in the gross income of the first company for the taxable year in which or with which the taxable year of the second company ends, the amount the first company would have received as a dividend, if on the last day referred to in (b) there had been distributed by the second company, and received by the shareholders, an amount which bears the same ratio to the undistributed Supplement P net income of the second company for its taxable year as the portion of such taxable year up to and including such last day bears to the entire taxable year. The foregoing rules apply to any chain of foreign corporations regardless of the number of corporations included in the chain.

The application of this article may be illustrated by the following examples:

Example (1): The X Corporation is a foreign corporation whose stock is owned by A, a United States citizen. The X Corporation owns the entire stock of the Y Corporation, another foreign corporation. The taxable year of the X Corporation is the calendar year and the taxable year of the Y Corporation is the fiscal year ending June 30. For the fiscal year ending June 30, 1939, more than the required percentage of the Y Corporation's gross income consists of foreign personal holding company income and no part of the earnings for such year is distributed as dividends. On the basis of these facts the Y Corporation is a foreign personal holding company for the fiscal year ending June 30, 1939. The X Corporation meets the stock ownership requirement and constitutes a foreign personal holding company for 1939, if it also meets the gross income requirement.

For the purpose of determining whether the X Corporation meets the gross income requirement, the entire

undistributed Supplement P net income of the Y Corporation for the fiscal year ending June 30, 1939, must be included as a dividend in the gross income of the X Corporation for 1939, since—

(*a*) the X Corporation was a shareholder in the Y Corporation on a day (June 30, 1939) in the taxable year of the Y Corporation ending with or within the taxable year of the X Corporation, which day was the last day in the taxable year of the Y Corporation on which the United States group required with respect to the Y Corporation existed,

(*b*) such last day was also the end of the Y Corporation's taxable year so that the portion of the taxable year of the Y Corporation up to and including such last day is equal to 100 percent of the taxable year of the Y Corporation, and, therefore, the portion of the undistributed Supplement P net income of the Y Corporation includible in the gross income of its shareholders is likewise equal to 100 percent, and

(*c*) The X Corporation being the sole shareholder of the Y Corporation must include such portion in its gross income for 1939, the taxable year in which or with which the taxable year of the Y Corporation ends.

If, after the inclusion of the presumptive dividend in its gross income, the X Corporation is a foreign personal holding company for 1939, then the undistributed Supplement P net income of the Y Corporation must also be included as a dividend in the gross income of the X Corporation in determining its undistributed Supplement P net income which is to be included in the gross income of A, the sole shareholder in the X Corporation. On the other hand, if, after including such presumptive dividend, the X Corporation does not constitute a foreign personal holding company, the undistributed Supplement P net income of the Y Corporation is not includible in the gross income of the X Corporation.

Example (2): The X Corporation referred to in example (1) sold the stock in the Y Corporation to other interests on September 30, 1939, so that after that date no United States group existed with respect to the Y Corporation. For the fiscal year ending June 30, 1940, more than the required percentage of the gross income of the Y Corporation consists of foreign personal holding company income. The net income of the Y Corporation for such fiscal year amounts to $1,000,000, of which $900,000 is distributed in dividends after September 30, 1939. The undistributed Supplement P net income of the Y Corporation for such fiscal year amounts to $100,000. Upon the basis of these facts the Y Corporation is a foreign personal holding company for the fiscal year ending June 30, 1940, since at one time in such fiscal year, or from July 1 to and including September 30, 1939, it meets the stock ownership requirement, and the gross income requirement is also satisfied.

In determining whether the X Corporation constitutes a foreign personal holding company for 1940, a portion of the undistributed Supplement P net income of the Y Corporation for the fiscal year ending June 30, 1940 (3/12 of $100,000, or $25,000), must be included as a dividend in the gross income of the X Corporation, since—

(*a*) the X Corporation was a shareholder in the Y Corporation on September 30, 1939, or on a day in the taxable year of the Y Corporation ending with or within the taxable year of the X Corporation which day was the last day in the Y Corporation's taxable year on which the United States group required with respect to the Y Corporation existed.

(*b*) The portion of the taxable year of the Y Corporation up to and including such day is three-twelfths of the entire taxable year of the Y Corporation and, therefore, the portion of the undistributed Supplement P net income of the Y Corporation includible in the gross income of its shareholders also is equal to three-twelfths, and

(*c*) the X Corporation, being the sole shareholder of the Y Corporation at the time the United States group with respect to the Y Corporation last existed, must include all of such portion in its gross income for 1940, the taxable year of the X Corporation in which or with which the taxable year of the Y Corporation ends.

It is to be observed that three-twelfths of the undistributed Supplement P net income of the Y Corporation for the entire taxable year and not the earnings realized by the Y Corporation up to and including September 30, 1939, the last day on which the United States group with respect to the Y Corporation existed, must be included in the gross income of the X Corporation.

Example (3): The X Corporation referred to in example (1) sold the stock in the Y Corporation to other interests on September 30, 1939, so that after that date a different United States group existed with respect to the Y Corporation. Assuming that the Y Corporation is a foreign personal holding company for the fiscal year ending June 30, 1940, no part of the undistributed Supplement P net income of the Y Corporation for such fiscal year would, in this instance, be includible in the gross income of the X Corporation for the year 1940, in determining whether the X Corporation is a foreign personal holding company for that year. In such case, the undistributed Supplement P net income of the Y Corporation is includible in the gross income of the other foreign personal holding companies, if any, and of the United States shareholders who are shareholders in the Y Corporation the day after September 30, 1939, which was the last day in the taxable year of the Y Corporation on which the United States group with respect to the Y Corporation existed.

If, however, the X Corporation sells 90 percent of its stock in the Y Corporation and thus is a minority shareholder in the Y Corporation on the last day of the taxable year of the Y Corporation on which the United States group with respect to the Y Corporation exists, the portion of the undistributed Supplement P net income allocable to the minority interest of the X Corporation would be includible in the gross income of the X Corporation, even though on such last day the United States group is not the same with respect to both corporations.

Example (4): If the Y Corporation in example (1) owns all of the stock of the Z Corporation, another foreign corporation, there would be a chain of three foreign corporations. In such case, assuming that the Z Corporation is a foreign personal holding company for a taxable year ending with or within the taxable year of the Y Corporation, the undistributed Supplement P net income of the Z Corporation would be included in the gross income of the Y Corporation for the purpose of determining whether the Y Corporation comes within the classification of a foreign personal holding company. If, after the inclusion of such presumptive dividend, the Y Corporation is a foreign personal holding company, the undistributed Supplement P net income of the Z Corporation would be included in the gross income of the Y Corporation in determining the undistributed Supplement P net income of the Y Corporation which is includible in the gross income of its shareholder, the X Corporation. The same process would be repeated with respect to determining whether the X Corporation is a foreign personal holding company and in determining its undistributed Supplement P net income. If all three corporations are foreign personal holding companies, the undistributed Supplement P net income of each would, in this manner, be reflected as a dividend in the gross income of A, the ultimate beneficial shareholder of the chain.

In the event that after the inclusion of the undistributed Supplement P net income of the Z Corporation in the gross income of the Y Corporation, the Y Corporation is not a foreign personal holding Company, then no part of the income of either the Z Corporation or the Y Corporation would be includible in the gross income of the X Corporation. In that event, whether the X Corporation is a foreign personal holding company, and its undistributed Supplement P net income, would be determined independently of the income of the Y Corporation and the Z Corporation.

SEC. 335. *Undistributed supplement P net income.*—For the purposes of this title the term "undistributed Supplement P net income" means the Supplement P net income (as defined in section 336) minus the amount

of the basic surtax credit provided in section 27 (b) (computed without is reduction, under section 27 (b) (1), by the amount of the credit provided in section 26 (a), relating to interest on certain obligations of the United States and Government corporations).

SEC. 336. *Supplement P net income.*—For the purposes of this title the term "Supplement P net income" means the net income with the following adjustments:

(a) *Additional deductions.*—There shall be allowed as deductions—

(1) Federal income, war-profits, and excess-profits taxes paid or accrued during the taxable year to the extent not allowed as a deduction under section 23; but not including the tax imposed by section 102, section 401, or a section of a prior income-tax law corresponding to either of such sections.

(2) In lieu of the deduction allowed by section 23 (q), contributions or gifts payment of which is made within the taxable year to or for the use of donees described in section 23 (q) for the purposes therein specified, to an amount which does not exceed 15 per centum of the company's net income, computed without the benefit of this paragraph and section 23 (q), and without the deduction of the amount disallowed under subsection (b) of this section, and without the inclusion in gross income of the amounts includible therein as dividends by reason of the application of the provisions of section 334 (b) (relating to the inclusion in the gross income of a foreign personal holding company of its distributive share of the undistributed Supplement P net income of another foreign personal holding company in which it is a shareholder).

(b) *Deductions not allowed.*—(1) *Taxes and pension trusts.*—The deductions provided in section 23 (d), relating to taxes of a shareholder paid by the corporation, and in section 23 (p), relating to pension trusts, shall not be allowed.

(2) *Expenses and depreciation.*—The aggregate of the deductions allowed under section 23 (a), relating to expenses, and section 23 (l), relating to depreciation, which are allocable to the operation and maintenance of property owned or operated by the company, shall be allowed only in an amount equal to the rent or other compensation received for the use or right to use the property, unless it is established (under regulations prescribed by the Commissioner with the approval of the Secretary) to the satisfaction of the Commissioner:

(A) That the rent or other compensation received was the highest obtainable, or, if none was received, that none was obtainable;

(B) That the property was held in the course of a business carried on bona fide for profit; and

(C) Either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business.

ART. 336–1. *Supplement P net income.*—The term "Supplement P net income" means the gross income as defined in section 334 less the deductions provided in section 23 (computed without regard to the provisions of Supplement I), subject to the qualifications, limitations, and exceptions provided in section 336. In addition to the qualifications, limitations, and exceptions provided in section 336 (a) and section 336 (b) (1), under section 336 (b) (2) the aggregate of the deductions allowed under section 23 (a), relating to expenses, and section 23 (l), relating to depreciation, which are allocable to the operation and maintenance of property owned or operated by the company shall be allowed only in an amount equal to the rent or other compensation received for the use of, or the right to use, the property, unless it is established to the satisfaction of the Commissioner:

(1) That the rent or other compensation received was the highest obtainable, or if none was received, that none was obtainable;

(2) That the property was held in the course of a business carried on bona fide for profit; and

(3) Either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business.

The burden of proof will rest upon the taxpayer to sustain the deduction claimed. If a United States shareholder, in computing his distributive share of the undistributed Supplement P net income of a foreign personal holding company to be included in gross income in his individual return (see section 337 and article 337–1), claims deductions for expenses and depreciation allocable to the operation and maintenance of property owned or operated by the company, in an aggregate amount in excess of the rent or other compensation received for the use of, or the right to use, the property, he shall attach to his income tax return a statement setting forth his claim for allowance of the additional deductions together with a complete statement of the facts and circumstances pertinent to his claim and the arguments on which he relies. Such statement shall set forth:

(*a*) A description of the property;

(*b*) The cost or other basis to the corporation and the nature and value of the consideration paid for the property;

(*c*) The name and address of the person from whom acquired and the date thereof;

(*d*) The name and address of the person to whom leased or rented, or the person permitted to use the property, and the number of shares of stock, if any, held by such person and the members of his family;

(*e*) The nature and gross amount of the rent or other compensation received for the use of, or the right to use, the property during the taxable year and for each of the five preceding years and the amount of the expenses incurred with respect to, and the depreciation sustained on, the property for such years:

(*f*) Evidence that the rent or other compensation was the highest obtainable and, if none was received, a statement of the reasons therefor;

(*g*) A copy of the contract, lease or rental agreement;

(*h*) The purpose for which the property was used;

(*i*) The business carried on by the corporation with respect to which the property was held and the gross income, expenses and net income derived from the conduct of such business for the taxable year and for each of the five preceding years;

(*j*) A statement of any reasons which existed for expectation that the operation of the property would be profitable, or a statement of the necessity for the use of the property in the business of the corporation, and the reasons why the property was acquired; and

(*k*) Any other information pertinent to the taxpayer's claim.

ART. 336–2. *Illustration of computation of Supplement P net income and undistributed Supplement P net income.*—The method of computation of the Supplement P net income and undistributed Supplement P net income may be illustrated as follows:

The following facts exist with respect to the M Corporation, a foreign personal holding company, for the calendar year 1938:

The gross income of the corporation as defined in section 334 amounts to $300,000, of which $85,000 represents its distributive share of the undistributed Supplement P net income of another foreign personal holding company in which it is a shareholder, $200,000 consists of dividends, $10,000 consists of interest, and the remainder ($5,000) consists of rent received from the principal shareholder of the corporation for the use of property owned by the corporation.

The expenses of the corporation amount to $83,000, of which $75,000 is allocable to the maintenance and operation of the property used by the principal shareholder, and $8,000 consists of ordinary and necessary office expenses allowable as a deduction. The claim for deduction for the expenses of, and depreciation on, the rented property in excess of the rent received for its use is not established as provided in section 336 (b) (2). The yearly depreciation on the rented property amounts to $30,000.

Federal income tax withheld at the source on the income of the corporation from sources within the United States amounts to $22,250.

No gain from the sale or exchange of stock or securities is realized during the taxable year, but losses in the amount of $10,000 are sustained from the sale of stock or securities which constitute capital assets.

Contributions payment of which is made to or for the use of donees described in section 23 (q), for the purposes therein specified, amount to $15,000, of which $5,000 is deductible in computing net income under section 21.

Dividends paid by the corporation to its shareholders during the taxable year amount to $50,000.

The net income for the purposes of computing the Supplement P net income of the corporation (including the dis-

tributive share of the undistributed Supplement P net income of the other foreign personal holding company) is $180,000, computed as follows (assuming for the purposes of this example only that the expenses of, and depreciation on, the rented property are deductible under section 23):

Income (Section 22)

Dividends	$200,000
Interest	10,000
Rent	5,000
Gross income as defined in section 22	215,000
Add:	
Distributive share of undistributed Supplement P net income of the other foreign personal holding company (considered as a dividend)	85,000
Gross income as defined in section 334	300,000

Deductions (Section 23)

Expenses allocable to operation of the rented property	$75,000	
Depreciation of the rented property	30,000	
Ordinary and necessary expenses (office)	8,000	
Losses (limited as provided in section 117)	2,000	
Contributions (within the 5 percent limitation specified in section 23 (q))	5,000	
		120,000
Net income for purposes of computing Supplement P net income		180,000

The Supplement P net income and the undistributed Supplement P net income of the corporation are $247,750 and $197,750, respectively, computed as follows:

Net income for purposes of computing Supplement P net income		$180,000
Add (see section 336 (b)):		
Contributions deductible in computing net income under section 21	$5,000	
Excess property expenses and depreciation over amount of rent received for use of property ($105,000—$5,000)	100,000	
	105,000	
Deduct (see section 336 (a)):		
Federal income taxes	$22,250	
Contributions (within the 15 percent limitation specified in section 336 (a) (2))	15,000	
	37,250	
Net additions under section 336		67,750
Supplement P net income		247,750
Less:		
Basic surtax credit for dividends paid (see section 335)		50,000
Undistributed Supplement P net income		197,750

SEC. 337. *Corporation income taxed to United States shareholders.*—(a) *General rule.*—The undistributed Supplement P net income of a foreign personal holding company shall be included in the gross income of the citizens or residents of the United States, domestic corporations, domestic partnerships, and estates or trusts (other than estates or trusts the gross income of which under this title includes only income from sources within the United States), who are shareholders in such foreign personal holding company (hereinafter called "United States shareholders") in the manner and to the extent set forth in this Supplement.

(b) *Amount included in gross income.*—Each United States shareholder, who was a shareholder on the day in the taxable year of the company which was the last day on which a United States group (as defined in section 331 (a) (2)) existed with respect to the company, shall include in his gross income, as a dividend, for the taxable year in which or with which the taxable year of the company ends, the amount he would have received as a dividend if on such last day there had been distributed by the company, and received by the shareholders, an amount which bears the same ratio to the undistributed Supplement P net income of the company for the taxable year as the portion of such taxable year up to and including such last day bears to the entire taxable year.

(c) *Credit for obligations of United States and its instrumentalities.*—Each United States shareholder shall be allowed a credit against net income, for the purpose of the tax imposed by sections 11, 13, 14, 201, 204, 207, or 362, of his proportionate share of the interest specified in section 25 (a) (1) or (2) which is included in the gross income of the company otherwise than by the application of the provisions of section 334 (b) (relating to the inclusion in the gross income of a foreign personal holding company of its distributive share of the undistributed Supplement P net income of another foreign personal holding company in which it is a shareholder).

(d) *Information in return.*—Every United States shareholder who is required under subsection (b) to include in his gross income any amount with respect to the undistributed Supplement P net income of a foreign personal holding company and who, on the last day on which a United States group existed with respect to the company, owned 5 per centum or more in value of the outstanding stock of such company shall set forth in his return in complete detail the gross income, deductions and credits, net income, Supplement P net income, and undistributed Supplement P net income of such company.

(e) *Effect on capital account of foreign personal holding company.*—An amount which bears the same ratio to the undistributed Supplement P net income of the foreign personal holding company for its taxable year as the portion of such taxable year up to and including the last day on which a United States group existed with respect to the company bears to the entire taxable year, shall, for the purpose of determining the effect of distributions in subsequent taxable years by the corporation, be considered as paid-in surplus or as a contribution to capital and the accumulated earnings and profits as of the close of the taxable year shall be correspondingly reduced, if such amount or any portion thereof is required to be included as a dividend, directly or indirectly, in the gross income of United States shareholders.

(f) Basis of stock in hands of shareholders.—The amount required to be included in the gross income of a United States shareholder under subsection (b) shall, for the purpose of adjusting the basis of his stock with respect to which the distribution would have been made (if it had been made), be treated as having been reinvested by the shareholder as a contribution to the capital of the corporation; but only to the extent to which such amount is included in his gross income in his return, increased or decreased by any adjustment of such amount in the last determination of the shareholder's tax liability, made before the expiration of seven years after the date prescribed by law for filing the return.

(g) *Basis of stock in case of death.*—For basis of stock or securities in a foreign personal holding company acquired from a decedent, see section 113 (a) (5).

(h) *Liquidation.*—For amount of gain taken into account on liquidation of foreign personal holding company, see section 115 (c).

(i) *Period of limitation on assessment and collection.*—For period of limitation on assessment and collection without assessment, in case of failure to include in gross income the amount properly includible therein under subsection (b), see section 275 (d).

ART. 337–1. *Income of foreign personal holding companies taxed to United States shareholders—(a) General rule.*—Supplement P does not impose a tax on foreign personal holding companies. The undistributed Supplement P net income of such companies, however, must be included in the manner and to the extent set forth in this article, in the gross income of their "United States shareholders," that is, the shareholders who are individual citizens or residents of the United States, domestic corporations, domestic partnerships (see section 901 (a)), and estates or trusts other than estates or trusts the gross income of which under Title I includes only income from sources within the United States.

(b) *Amount includible in gross income.*—Each United States shareholder, who was a shareholder on the day in the taxable year of the foreign personal holding company which was the last day on which a United States group (see section 331 (a) (2) and article 331–3) existed with respect to the company, shall include in his gross income, as a dividend, for the taxable year in which or with which the taxable year of the company ends, the amount he would have received as a dividend if on such last day there had been distributed by the company and received by the shareholders an amount which bears the same ratio to the undistributed Supplement P net income of the company for the taxable year as the portion of such taxable year up to and including such last day bears to the entire taxable year.

The undistributed Supplement P net income of the foreign personal holding company is includible only in the gross income of the United States shareholders who were shareholders in the company on the last day of its taxable year on which the United States group existed with respect to the company. Such United States shareholders, accordingly, are determined by the stock holdings as of such specified time. This rule applies to every United States shareholder who was a shareholder in the company at the specified time regardless of whether the United States shareholder is included within the United States group. For example, a domestic corporation which is a United States shareholder at the specified time must return its distributive share in the undistributed Supplement P net income even though the domestic corporation can not be included within the United States group since, under section 333 (a) (1) and article 333 (a)–2,

the stock it owns in the foreign corporation is considered as being owned proportionately by its shareholders for the purpose of determining whether the foreign corporation is a foreign personal holding company.

The United States shareholders must include in their gross income their distributive shares of that proportion of the undistributed Supplement P net income for the taxable year of the company which is equal in ratio to that which the portion of the taxable year up to and including the last day on which the United States group with respect to the company existed bears to the entire taxable year. Thus, if the last day in the taxable year on which the required United States group existed was also the end of the taxable year, the portion of the taxable year up to and including such last day would be equal to 100 percent and in such case, the United States shareholders would be required to return their distributive shares in the entire undistributed Supplement P net income. But if the last day on which the required United States group existed was September 30, and the taxable year was a calendar year, the portion of the taxable year up to and including such last day would be equal to nine-twelfths and in that case, the United States shareholders would be required to return their distributive shares in only nine-twelfths of the undistributed Supplement P net income.

The amount which each United States shareholder must return is that amount which he would have received as a dividend if the above specified portion of the undistributed Supplement P net income had in fact been distributed by the foreign personal holding company as a dividend on the last day of its taxable year on which the required United States group existed. Such amount is determined, therefore, by the interest of the United States shareholder in the foreign personal holding company, that is, by the number of shares of stock owned by the United States shareholder and the relative rights of his class of stock, if there are several classes of stock outstanding. Thus, if a foreign personal holding company has both common and preferred stock outstanding and the preferred shareholders are entitled to a specified dividend before any distribution may be made to the common shareholders, then the assumed distribution of the stated portion of the undistributed Supplement P net income must first be treated as a payment of the specified dividend on the preferred stock before any part may be allocated as a dividend on the common stock.

The assumed distribution of the required portion of the undistributed Supplement P net income must be returned as dividend income by the United States shareholders for their respective taxable years in which or with which the taxable year of the foreign personal holding company ends. For example, if the M Corporation whose taxable year is the calendar year is a foreign personal holding company for 1938, and if A, one of its United States shareholders, makes returns on a calendar year basis, while B, another United States shareholder, makes returns on the basis of a fiscal year ending November 30, A must return his assumed dividend as income for the taxable year 1938, and B must return his distributive share as income for the fiscal year ending November 30, 1939. In applying this rule, the date as of which the United States group last existed with respect to the company is immaterial. Thus, in the foregoing example, if September 30, 1938, was the last day on which the United States group with respect to the M Corporation existed, B would still be required to return his assumed dividend as income for the fiscal year ending November 30, 1939, even though September 30, 1938, the date as of which the distribution is assumed to have been made, does not fall within such fiscal year.

ART. 337–2. *Credit for obligations of the United States.*—Each United States shareholder required to return his distributive share in the undistributed Supplement P net income of a foreign personal holding company for any taxable year is allowed, for purposes of the tax imposed by sections 11, 13, 14, 201, 204, 207, or 362, a credit against his net income for his proportionate share of whatever interest on obligations of the United States or its instrumentalities (as specified in section 25 (a) (1) and (2)) may be included in the gross income of the company for such taxable year, with the exception of any such interest as may be so included by reason of the application of the provisions of section 334 (b) and article 334–2.

For example, the M Corporation is a foreign personal holding company which owns all the stock of the N Corporation, another foreign personal holding company. Both companies receive interest on obligations of the United States or its instrumentalities as specified in section 25 (a) (1) and (2). In applying the credit allowable under section 337 (c), the United States shareholders of the M Corporation would be entitled to a credit only for their proportionate shares of the interest received by that company and not for any part of the interest received by the N Corporation, regardless of whether the interest received by the N Corporation is included in the gross income of the M Corporation, as an actual dividend or as a constructive dividend under section 334 (b).

ART. 337–3. *Information in return.*—The information required by section 337 (d) in the returns of certain United States shareholders relates only to the taxable year of a foreign personal holding company for which is computed such corporation's undistributed Supplement P net income, all or part of which must be included in gross income by the United States shareholder of whom the information is required. The information shall be submitted as a part of the income tax returns required by the Act of such persons, in the form of a statement attached to the return.

ART. 337–4. *Effect on capital account of foreign personal holding company and basis of stock in hands of shareholders.*—Sections 337 (e) and 337 (f) are designed to prevent double taxation with respect to the undistributed Supplement P net income of foreign personal holding companies. The application of these sections may be illustrated by the following examples:

Example (1): The M Corporation is a foreign personal holding company. Seventy-five percent in value of its capital stock is owned by A, a citizen of the United States, and the remainder, or 25 per cent, of its stock is owned by B, a nonresident alien individual. For the calendar year 1938 the M Corporation has an undistributed Supplement P net income of $100,000. A is required to include $75,000 of such income in gross income in his return for the calendar year 1938. The $100,000 is treated as paid-in surplus or as a contribution to the capital of the M Corporation and its accumulated earnings and profits as of the close of the calendar year 1938 are correspondingly reduced. If after treating such $100,000 as paid-in surplus or as a contribution to capital, the M Corporation has no accumulated earnings and profits at the close of 1938, and if for the calendar year 1939, the M Corporation had no earnings and profits, but distributed $100,000, the amount so distributed would be tax-free in the hands of both A and B. If, however, after treating the $100,000 as paid-in surplus or as a contribution to capital, the M Corporation had accumulated earnings and profits of $100,000 at the close of 1938, the facts otherwise being the same, the distributions in 1939 would be taxable to A, and the taxability of such distributions to B would depend upon the application of section 119 (a) (2) (B), relating to the treatment of dividends from a foreign corporation as income from sources within or without the United States.

Example (2): In example (1) assume the basis of A's stock to be $300,000. If A includes in gross income in his return for the calendar year 1938, $75,000 as a constructive dividend from the M Corporation, the basis of his stock would be $375,000. After the $75,000 is distributed by the M Corporation tax-free the basis of A's stock, assuming no other changes, would again be $300,000. If A failed to include the $75,000 in gross income in his return as required by the Act and his failure was not discovered until after the 7-year period of limitations had expired, the application of the rule would not increase the basis of A's stock. The subsequent tax-free distribution of

$75,000 would reduce his basis to $225,000, thus tending to compensate for his failure to include the amount of $75,000 in his gross income. If the undistributed Supplement P net income of the M Corporation is readjusted within the statutory period of limitations, thus increasing or decreasing the amount A would have to include in his gross income, proper adjustment is required to be made to the basis of A's stock on account of such readjustment.

SEC. 338. *Information returns by officers and directors.*—(a) *Monthly returns.*—On the fifteenth day of each month which begins after the date of the enactment of this Act each individual who on such day is an officer or a director of a foreign corporation which, with respect to its taxable year (if not beginning before August 26, 1936) preceding the taxable year (whether beginning on, before, or after January 1, 1938) in which such month occurs, was a foreign personal holding company, shall file with the Commissioner a return setting forth with respect to the preceding calendar month the name and address of each shareholder, the class and number of shares held by each, together with any changes in stockholdings during such period, the name and address of any holder of securities convertible into stock of such corporation, and such other information with respect to the stock and securities of the corporation as the Commissioner with the approval of the Secretary shall by regulations prescribe as necessary for carrying out the provisions of this Act. The Commissioner, with the approval of the Secretary, may by regulations prescribe, as the period with respect to which returns shall be filed, a longer period than a month. In such case the returns shall be due on the fifteenth day of the succeeding period, and shall be filed by the individuals who on such day are officers and directors of the corporation.

(b) *Annual returns.*—On the sixtieth day after the close of the taxable year of a foreign personal holding company each individual who on such sixtieth day is an officer or director of the corporation shall file with the Commissioner a return setting forth—

(1) In complete detail the gross income, deductions and credits, net income, Supplement P net income, and undistributed Supplement P net income of such foreign personal holding company for such taxable year; and

(2) The same information with respect to such taxable year as is required in subsection (a); except that if all the required returns with respect to such year have been filed under subsection (a) no information under this paragraph need be set forth in the return filed under this subsection.

ART. 338–1. *Information returns by officers and directors of certain foreign corporations*—(a) *Requirement for filing returns*—(1) *General.*—Under section 338 (a), on the 15th day of each month which begins after May 28, 1938, each individual who on such 15th day is an officer or a director of a foreign corporation which, with respect to its taxable year (if not beginning before August 26, 1936) preceding the taxable year (whether beginning on, before, or after January 1, 1938) in which such month occurs, was a foreign personal holding company, is required to file with the Commissioner a monthly information return as provided in that section and this article.

(2) *Returns for a period exceeding one month.*—In the case of a foreign personal holding company, which before the close of its taxable year specified in paragraph (a) (1) of this article and ending on or after May 31, 1938, distributed to its shareholders 90 percent or more of its Supplement P net income as defined in Supplement P, added to the Revenue Act of 1936 by section 201 of Title II of the Revenue Act of 1937 or in Supplement P of the Revenue Act of 1938, or which has no such net income for such taxable year, the following periods are prescribed with respect to which information returns on Form 957 shall be filed during the following year:

The return for the last month of the preceding taxable year shall be filed on the 15th day of the first month following the close of such taxable year. Subsequent returns shall be filed for each 6-month period following the close of such taxable year and shall be filed on the 15th day of the first month following such period. If any change in the stock holdings or in the holdings of securities convertible into stock of the corporation occurs during such periods or if a resolution or plan (including any amendments thereof or supplements thereto) for the dissolution of the corporation or for the liquidation of the whole or any part of its capital stock is adopted during such periods, a monthly information return must also be filed on the 15th day of the month following each month in which the change occurs or the resolution or plan is adopted. In any case under this paragraph where the date for filing a monthly return coincides with the date for filing the return for a 6-month period only the return for the 6-month period need be filed.

In the case of a foreign personal holding company which before the close of its taxable year specified in paragraph (a) (1) of this article and ended before May 31, 1938, distributed to its shareholders 90 percent or more of its Supplement P net income as defined in Supplement P, added to the Revenue Act of 1936 by section 201 of Title II of the Revenue Act of 1937, or which had no such net income for such taxable year, the following periods are prescribed with respect to which information returns under section 338 (a) of the Revenue Act of 1938 and this article shall be filed during the year following the year for which it had no such net income or in which such distribution occurred and after May 28, 1938:

The first information return shall be filed on the same day an information return would have been required to be filed under section 338 (a) of Supplement P, added to the Revenue Act of 1936 by section 201 of Title II of the Revenue Act of 1937, and paragraph (a) (2) of article 338–1 of Chapter XXXIV added to Regulations 94 by Treasury Decision 4782, approved December 7, 1937 (C. B. 1937–2, 168), had the Revenue Act of 1938 not been enacted. Subsequent returns shall be filed for each 6-month period following the close of the month preceding the month in which such day occurs and shall be filed on the 15th day of the first month following such 6-month period. If any change in the stock holdings or in the holdings of securities convertible into stock of the corporation occurs during such periods or if a resolution or plan (including any amendments thereof or supplements thereto) for the dissolution of the corporation or for the liquidation of the whole or any part of its capital stock is adopted during such periods, a monthly information return must be filed on the 15th day of the month following each month in which the change occurs or the resolution or plan is adopted. In any case under this paragraph where the date for filing a monthly return coincides with the date for filing a return for a 6-month period, only the return for the 6-month period need be filed.

(3) *Returns jointly made.*—If two or more officers or directors of a foreign corporation are required to file information returns for any period under section 338 (a) and this article, any two or more of such officers or directors may, in lieu of filing separate returns for such period, jointly execute and file one return.

(b) *Form of return.*—The return under section 338 (a) and this article shall be made on Form 957, copies of which, upon request, may be procured from any collector. Each officer or director should carefully prepare his return so as to set forth fully and clearly the information called for therein and by the applicable regulations. Returns which have not been so prepared will not be considered as meeting the requirements of the Act.

(c) *Contents of return.*—The return shall, in accordance with the provisions of this article and the instructions on the form, set forth with respect to the preceding period the following information:

(1) Name and address of corporation;

(2) Kind of business in which the corporation is engaged;

(3) Date of incorporation;

(4) The country under the laws of which the corporation is incorporated;

(5) Number of shares and par value of common stock of the corporation outstanding as of the beginning and end of the period;

(6) Number of shares and par value of preferred stock of the corporation outstanding as of the beginning and end of the period, the rate of dividend on such stock and whether such dividend is cumulative or noncumulative;

(7) A description of the convertible securities issued by the corporation, including a statement of the face value of, and rate of interest on, such securities;

(8) The name and address of each shareholder, the class and number of shares held by each, together with any changes in stock holdings during such period;

(9) The name and address of each holder of securities convertible into stock of the corporation, the class, number, and face value of the securities held

by each, together with any changes in the holdings of such securities during the period;

(10) A certified copy of any resolution or plan, and any amendments thereof or supplements thereto, for or in respect of the dissolution of the corporation or the liquidation of the whole or any part of its capital stock; and

(11) Such other information as may be required by the return form.

If a person is required to file a return under section 338 (a) and this article with respect to more than one foreign corporation, a separate return must be filed with respect to each foreign corporation.

(*d*) *Verification of returns.*—All returns required by section 338 (a) and this article shall be verified under oath or affirmation in the same manner as prescribed in article 51–4.

(*e*) *Penalties.*—For criminal penalties for failure to file the returns required by section 338 (a) and this article, see section 340.

ART. 338–2. *Annual information returns by officers and directors of certain foreign corporations*—(a) *Requirement for filing returns*—(1) *General.*—Under section 338 (b), on the sixtieth day after the close of the taxable year of a foreign personal holding company each individual who on such sixtieth day is an officer or director of the corporation shall file with the Commissioner an annual information return as provided in that section and this article.

(2) *Returns jointly made.*—If two or more officers or directors of a foreign corporation are required to file annual information returns under section 338 (b) and this article for any taxable year of the corporation, any two or more of such officers or directors may in lieu of filing separate annual returns for such taxable year, jointly execute and file one annual return.

(*b*) *Form of return.*—The return under section 338 (b) and this article shall be made on Form 958, copies of which, upon request, may be procured from any collector. Each officer or director should carefully prepare his return so as to set forth fully and clearly the information called for therein and by the applicable regulations. Returns which have not been so prepared will not be considered as meeting the requirements of the Act.

(*c*) *Contents of return.*—The return shall, in accordance with the provisions of this article and the instructions on the form, set forth with respect to the taxable year of the foreign personal holding company the following information:

(1) The gross income, deductions and credits, net income, Supplement P net income, and undistributed Supplement P net income of the foreign personal holding company for such taxable year, in complete detail;

(2) The same information with respect to such taxable year which is required by section 338 (a) and paragraph (*c*) of article 338–1, except that if all the required returns with respect to such year have been filed under section 338 (a) and article 338–1, no information under section 338 (b) (2) and this paragraph need be set forth in such annual return; and

(3) Such other information as may be required by the return form.

(*d*) *Verification of returns.*—All returns required by section 338 (b) and this article shall be verified under oath or affirmation in the same manner as prescribed in article 51–4.

(*e*) *Penalties.*—For criminal penalties for failure to file the returns required by section 338 (b) and this article, see section 340.

ART. 338–3. *Time and place of filing returns.*—Returns required by section 338 and the regulations thereunder shall be filed with the Commissioner of Internal Revenue, Washington, D. C., attention Income Tax Unit, Records Division, and will be considered filed within the time or times required by law if, within such time or times, such returns are made and placed in the mails in due course, properly addressed and postage paid, provided they are actually received in the office of the Commissioner of Internal Revenue, Washington, D. C., even though received after such time or times.

SEC. 339. *Information returns by shareholders.*—(*a*) *Monthly returns.*—On the fifteenth day of each month which begins after the date of the enactment of this Act each United States shareholder, by or for whom 50 per centum or more in value of the outstanding stock of a foreign corporation is owned directly or indirectly (including in the case of an individual, stock owned by the members of his family as defined in section 333 (a) (2)), if such foreign corporation with respect to its taxable year (if not beginning before August 26, 1936) preceding the taxable year (whether beginning on, before, or after January 1, 1938) in which such month occurs was a foreign personal holding company, shall file with the Commissioner a return setting forth with respect to the preceding calendar month the name and address of each shareholder, the class and number of shares held by each, together with any changes in stockholdings during such period, the name and address of any holder of securities convertible into stock of such corporation, and such other information with respect to the stock and securities of the corporation as the Commissioner with the approval of the Secretary shall by regulations prescribe as necessary for carrying out the provisions of this Act. The Commissioner, with the approval of the Secretary, may by regulations prescribe, as the period with respect to which returns shall be filed, a longer period than a month. In such case the return shall be due on the fifteenth day of the succeeding period, and shall be filed by the persons who on such day are United States shareholders.

(*b*) *Annual returns.*—On the sixtieth day after the close of the taxable year of a foreign personal holding company each United States shareholder by or for whom on such sixtieth day 50 per centum or more in value of the outstanding stock of such company is owned directly or indirectly (including in the case of an individual, stock owned by members of his family as defined in section 333 (a) (2)), shall file with the Commissioner a return setting forth the same information with respect to such taxable year as is required in subsection (a); except that if all the required returns with respect to such year have been filed under subsection (a) no return shall be required under this subsection.

ART. 339–1. *Information returns by shareholders of certain foreign corporations*—(*a*) *Requirement for filing returns*—(1) *General.*—On the 15th day of each month which begins after May 28, 1938, each United States shareholder, by or for whom 50 percent or more in value of the outstanding stock of a foreign corporation is owned, directly or indirectly (including, in the case of an individual, stock owned by members of his family as defined in section 333 (a) (2)), if such foreign corporation with respect to its taxable year (if not beginning before August 26, 1936) preceding the taxable year (whether beginning on, before, or after January 1, 1938) in which such month occurs was a foreign personal holding company, shall file with the Commissioner an information return as provided in section 339 (a) and this article.

(2) *Returns for a period exceeding one month.*—In the case of a foreign personal holding company which before the close of its taxable year specified in paragraph (*a*) (1) of this article, distributed to its shareholders 90 percent or more of its Supplement P net income, or which has no such net income for such taxable year, the periods with respect to which information returns under section 339 (a) shall be filed shall be the same as the periods prescribed in paragraph (*a*) (2) of article 338–1.

(3) *Duplicate returns.*—If a shareholder in a foreign corporation files, as an officer or director in such corporation, the returns required by section 338 (a) and article 338–1 such returns shall be considered as returns filed under section 339 (a).

(*b*) *Form of return.*—The return under section 339 (a) and this article shall be made on Form 957, copies of which, upon request, may be procured from any collector. Each shareholder should carefully prepare his return so as to set forth fully and clearly the information called for therein and by the applicable regulations. Returns which have not been so prepared will not be considered as meeting the requirements of the Act.

(*c*) *Contents of return.*—The return shall, in accordance with the provisions of this article and the instructions on the form, set forth with respect to the preceding period the same information as required to be shown on that form by section 338 (a) and paragraph (*c*) of article 338–1.

If a person is required to file a return under section 339 (a) and this article with respect to more than one foreign corporation, a separate return must be filed with respect to each foreign corporation.

(*d*) *Verification of returns.*—All returns required by section 339 (a) and this

article shall be verified under oath or affirmation in the same manner as prescribed in article 51–4.

(e) *Penalties.*—For criminal penalties for failure to file the returns required by section 339 (a) and this article, see section 340.

ART. 339–2. *Annual information returns by shareholders of certain foreign corporations*—(a) *Requirement for filing returns*—(1) *General.*—Under section 339 (b), on the sixtieth day after the close of the taxable year of a foreign personal holding company, each United States shareholder, by or fo whom on such sixtieth day 50 percent or more in value of the outstanding stock of the company is owned, directly or indirectly (including in the case of an individual, stock owned by members of his family as defined in section 333 (a) (2)), shall file with the Commissioner an information return as provided in that section and this article.

(2) *Duplicate returns.*—If a shareholder in a foreign corporation files, as an officer or director in such corporation, the returns required by section 338 (b) and article 338–2, such returns shall be considered as returns filed under section 339 (b).

(b) *Form of return.*—The return under section 339 (b) and this article shall be made on Form 957, copies of which, upon request, may be procured from any collector. Each shareholder should carefully prepare his return so as to set forth fully and clearly the information called for therein and by the applicable regulations. Returns which have not been so prepared will not be considered as meeting the requirements of the Act.

(c) *Contents of return.*—The return shall, in accordance with the provisions of this article and the instructions on the form, set forth with respect to the taxable year of the foreign personal holding company the same information which is required under section 339 (a), paragraph (c) of article 338–1 and paragraph (c) of article 339–1, except that if all the required returns with respect to such year have been filed under section 339 (a) and article 339–1, no return under section 339 (b) and this article is required.

If a person is required to file an annual return under section 339 (b) and this article with respect to more than one foreign personal holding company, a separate return must be filed with respect to each foreign personal holding company.

(d) *Verification of returns.*—All returns required by section 339 (b) and this article shall be verified under oath or affirmation in the same manner as prescribed in article 51–4.

(e) *Penalties.*—For criminal penalties for failure to file the returns required by section 339 (b) and this article see section 340.

ART. 339–3. *Time and place of filing returns.*—Returns required by section 339 and the regulations thereunder shall be filed with the Commissioner of Internal Revenue, Washington, D. C., attention Income Tax Unit, Records Division, and will be considered filed within the time or times required by law if, within such time or times, such returns are made and placed in the mails in due course, properly addressed and postage paid, provided they are actually received in the office of the Commissioner of Internal Revenue, Washington, D. C., even though received after such time or times.

SEC. 340. *Penalties.*—Any person required under section 338 or 339 to file a return, or to supply any information, who willfully fails to file such return, or supply such information, at the time or times required by law or regulations, shall, in lieu of the penalties provided in section 145 (a) for such offense, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $2,000, or imprisoned for not more than one year, or both.

CHAPTER XXXV

Mutual Investment Companies

Supplement Q—Mutual Investment Companies

SEC. 361. *Definition.*—(a) *In general.*—For the purposes of this title the term "mutual investment company" means any domestic corporation (whether chartered or created as an investment trust, or otherwise), other than a personal holding company as defined in Title IA, if—

(1) It is organized for the purpose of, and substantially all its business consists of, holding, investing, or reinvesting in stock or securities; and

(2) At least 95 per centum of its gross income is derived from dividends, interest, and gains from sales or other disposition of stock or securities; and

(3) Less than 30 per centum of its gross income is derived from the sale or other disposition of stock or securities held for less than six months; and

(4) An amount not less than 90 per centum of its net income is distributed to its shareholders as taxable dividends during the taxable year; and

(5) Its shareholders are, upon reasonable notice, entitled to redemption of their stock for their proportionate interests in the corporation's properties, or the cash equivalent thereof less a discount not in excess of 3 per centum thereof.

(b) *Limitations.*—Despite the provisions of paragraph (1) a corporation shall not be considered as a mutual investment company if at any time during the taxable year—

(1) More than 5 per centum of the gross assets of the corporation, taken at cost, was invested in stock or securities, or both, of any one corporation, government, or political subdivision thereof, but this limitation shall not apply to investments in obligations of the United States or in obligations of any corporation organized under general Act of Congress if such corporation is an instrumentality of the United States; or

(2) It owned more than 10 per centum of the outstanding stock or securities, or both, of any one corporation; or

(3) It had any outstanding bonds or indebtedness in excess of 10 per centum of its gross assets taken at cost; or

(4) It fails to comply with any rule or regulation prescribed by the Commissioner, with the approval of the Secretary, for the purpose of ascertaining the actual ownership of its outstanding stock.

ART. 361–1. *Definition of a mutual investment company.*—The term "mutual investment company" means a domestic corporation whether chartered or incorporated, or created under a trust instrument or otherwise, as an investment trust, and whether of the fixed or general management type (other than a personal holding company as defined in section 402), which complies with all the conditions prescribed by section 361. As to definition of a corporation see section 901.

ART. 361–2. *Proof of status of a mutual investment company.*—(a) The Act requires that the corporation must have been organized for the purpose of, and that substantially all of its business must have consisted of, holding, investing or reinvesting in, stock or securities. It is not sufficient that the corporation is engaged in holding, investing or reinvesting in, stock or securities. It must have been organized for that purpose, and, throughout the taxable year, operated primarily as a medium through which contributing shareholders are offered centralized management and diversity of investments. If its predominant purpose is to hold, invest or reinvest in, stock or securities, and if substantially all of its business consists of holding, investing or reinvesting in, such stock or securities, the existence or exercise of incidental powers to engage in other business will not deprive a corporation of classification as mutual investment company. A finance corporation, or a corporation engaged in the business of a dealer in stock or securities, or of a trader in stock or securities for its own account, is not a mutual investment company.

(b) The Act provides that at least 95 percent of the corporation's gross income for the taxable year must be derived from dividends, interest, and gains from sales or other disposition of stock or securities, and that less than 30 percent of the corporation's gross income for the taxable year must have been derived from the sale or other disposition of stock or securities held for less than six months. (See section 361 (a) (2) and (3).) In determining the percentage of the corporation's gross income which has been derived from such sources, a loss from the sale or other disposition of stock or securities does not enter into the computation. The determination of the period for which stock or securities have been held shall be governed by the provisions of section 117 (h) in so far as applicable.

(c) The Act provides that an amount not less than 90 percent of the corporation's net income for the taxable year must have been distributed to its shareholders as taxable dividends during the taxable year. The term "taxable dividends" means dividends (as defined in section 115) which are taxable in the hands of such shareholders as are subject to taxation under Title I, and includes, for the purpose of section 361 (a) (4), the proportionate share of the net earnings of the current year to the date of redemption distributed to the share-

holder upon redemption. A taxable dividend is not distributed to its shareholders during the taxable year within the meaning of section 361 (a) (4), unless the dividend is received by the shareholders during the taxable year of the company. See article 27 (b)–2, relating to when dividends are considered paid.

(*d*) The Act requires that shareholders must, upon reasonable notice, be entitled at all times during the taxable year to redemption or purchase of their stock for their proportionate interests in the corporation's properties, or the cash equivalent thereof, less a discount not in excess of 3 percent thereof. Redemption within 60 days of written notice is redemption upon reasonable notice, even though subject to exception in case of extraordinary crises.

ART. 361–3. *Records to be kept for purpose of ascertaining actual ownership of outstanding stock of mutual investment companies.*—Every mutual investment company shall maintain in the collection district in which it is required to file its income tax return permanent records showing the information relative to the actual owners of its stock contained in the written statements required by these regulations to be demanded from the shareholders. The term "actual owner of stock," as used in these regulations, includes the person who is required to include in gross income in his return the dividends received on the stock. Such records shall be kept at all times available for inspection, by any authorized officer or employee of the Bureau of Internal Revenue, and shall be retained as long as the contents thereof may become material in the administration of any internal-revenue law.

A mutual investment company shall demand of each of its shareholders (or in the case of a company all or substantially all of the capital stock of which is held by trustees for the purpose of exercising voting rights, such company shall demand of each of the registered holders of certificates of beneficial interest in the company) on or before the payment of any dividend a written statement giving (1) the name and address of the actual owner, as of the date the shareholder becomes entitled to the dividend, whether payable then or later, of the stock with respect to which the dividend is payable, (2) the name and address of the person who executes the statement, and (3) the number of shares to which the statement pertains, or if the statement is made by the actual owner, the total number of shares actually owned by such person.

At the time the first demand is made as required by this article, a like statement shall be demanded with respect to any prior dividends paid within the taxable year, unless at the time such dividends were paid ownership statements were demanded as required by article 48 (e)–4 of Regulations 94.

ART. 361–4. *Records to be kept for purpose of determining whether a corporation claiming to be a mutual investment company is a personal holding company.*—For the purpose of determining whether a domestic corporation claiming to be a mutual investment company is a personal holding company as defined in section 402, the permanent records of the corporation shall show, to the best of the knowledge and belief of the actual owners of its stock, the maximum number of shares of the corporation (including the number and face value of securities convertible into stock of the corporation) to be considered as actually or constructively owned by each of the actual owners of any of its stock at any time during the last half of the corporation's taxable year, as provided in section 404. Statements giving such additional information shall be demanded not later than 30 days after the close of the corporation's taxable year, as follows:

(1) In the case of a corporation having 2,000 or more actual owners of its stock on any dividend payment date, as disclosed by statements received in response to demands made by the corporation as provided in article 361–3, from each person so disclosed or known to the corporation as the actual owner of 5 percent or more of its stock; or

(2) in the case of a corporation having less than 2,000 and more than 200 actual owners of its stock as so disclosed, from each person so disclosed or known to the corporation as actually owning 1 percent or more of its stock; or

(3) in the case of a corporation having 200 or less actual owners of its stock, from each person who is the actual owner of one-half of 1 percent or more of its stock.

ART. 361–5. *Additional information required in returns of shareholders.*—Any person who fails or refuses to comply with the demand of a mutual investment company for the written statements which articles 361–3 and 361–4 require the company to demand from its shareholders shall submit as a part of the income tax return required by the Act of such person a statement showing, to the best of his knowledge and belief—

(1) the number of shares actually owned by him at any and all times during the period for which the return is filed in any company claiming to be a mutual investment company;

(2) the dates of acquisition of any such stock during such period and the names and addresses of persons from whom it was acquired;

(3) the dates of disposition of any such stock during such period and the names and addresses of the transferees thereof;

(4) the names and addresses of the members of his family (as defined in section 404 (a) (2)); the names and addresses of his partners, if any, in any partnership; and the maximum number of shares, if any, actually owned by each in any corporation claiming to be a mutual investment company, at any time during the last half of the taxable year of such company;

(5) the names and addresses of any corporation, partnership, association, or trust in which he had a beneficial interest to the extent of at least 10 percent at any time during the period for which such return is made, and the number of shares of any corporation claiming to be a mutual investment company actually owned by each;

(6) the maximum number of shares (including the number and face value of securities convertible into stock of the corporation) in any domestic corporation claiming to be a mutual investment company to be considered as constructively owned by such individual at any time during the last half of the corporation's taxable year, as provided in section 404 and articles 404 (a)–1 to 404 (a)–7 and article 404 (b)–1; and

(7) the amount and date of receipt of each dividend received during such period from every corporation claiming to be a mutual investment company.

When making demand for the written statements required of each shareholder under these regulations, the company shall inform each of the shareholders of his duty to submit as a part of his income tax return the statements which are required by this article if he fails or refuses to comply with such demand. A list of the persons failing or refusing to comply in whole or in part with a company's demand shall be maintained as a part of its records required by these regulations. A company which fails to keep such records to show the actual ownership of its outstanding stock as are required by these regulations, or which may be required from time to time by any rule or regulation prescribed by the Commissioner, with the approval of the Secretary, for such purpose, shall not be taxable as a mutual investment company.

Nothing in these regulations shall be construed to relieve mutual investment companies or their shareholders from the duty of filing information returns required by regulations prescribed under sections 147 and 148.

SEC. 362. *Tax on mutual investment companies.*—(*a*) *Supplement Q net income.*—For the purposes of this title the term "Supplement Q net income" means the adjusted net income minus the basic surtax credit computed under section 27 (b) without the application of paragraphs (2) and (3).

(*b*) *Imposition of tax.*—There shall be levied, collected, and paid for each taxable year upon the Supplement Q net income of every mutual investment company a tax equal to 16½ per centum of the amount thereof.

ART. 362–1. *Tax on mutual investment companies.*—If a corporation, as defined

in section 901, shows to the satisfaction of the Commissioner that it is entitled to the status of a mutual investment company, as defined in section 361, it is taxable upon its Supplement Q net income, as defined in section 362 (a), at the rate of 16½ percent. A mutual investment company is not allowed, under section 362 (a), the credit for dividends received provided in section 26 (b). In all other respects, a mutual investment company is treated, for purposes of taxation, as any other corporation subject to taxation under the Act.

CHAPTER XXXVI

Exchanges and Distributions in Obedience to Orders of Securities and Exchange Commission

Supplement R—Exchanges and Distributions in Obedience to Orders of Securities and Exchange Commission

SEC. 371. *Nonrecognition of gain or loss—(a) Exchanges of stock or securities only.*—No gain or loss shall be recognized to the transferor if stock or securities in a corporation which is a registered holding company or a majority-owned subsidiary company are transferred to such corporation or to an associate company thereof which is a registered holding company or a majority-owned subsidiary company solely in exchange for stock or securities (other than stock or securities which are nonexempt property), and the exchange is made by the transferee corporation in obedience to an order of the Securities and Exchange Commission.

(b) *Exchanges of property for property by corporations.*—No gain or loss shall be recognized to a transferor corporation which is a registered holding company or an associate company of a registered holding company, if such corporation, in obedience to an order of the Securities and Exchange Commission transfers property solely in exchange for property (other than nonexempt property), and such order recites that such exchange by the transferor corporation is necessary or appropriate to the integration or simplification of the holding company system of which the transferor corporation is a member.

(c) *Distribution of stock or securities only.*—If there is distributed, in obedience to an order of the Securities and Exchange Commission, to a shareholder in a corporation which is a registered holding company or a majority-owned subsidiary company, stock or securities (other than stock or securities which are nonexempt property), without the surrender by such shareholder of stock or securities in such corporation, no gain to the distributee from the receipt of the stock or securities so distributed shall be recognized.

(d) *Transfers within system group.*—(1) No gain or loss shall be recognized to a corporation which is a member of a system group (A) if such corporation transfers property to another corporation which is a member of the same system group in exchange for other property, and the exchange by each corporation is made in obedience to an order of the Securities and Exchange Commission, or (B) if there is distributed to such corporation as a shareholder in a corporation which is a member of the same system group, property, without the surrender by such shareholder of stock or securities in the corporation making the distribution, and the distribution is made and received in obedience to an order of the Securities and Exchange Commission. If an exchange by or a distribution to a corportion with respect to which no gain or loss is recognized under any of the provisions of this paragraph may also be considered to be within the provisions of subsection (a), (b), or (c), then the provisions of this paragraph only shall apply.

(2) If the property received upon an exchange which is within any of the provisions of paragraph (1) of this subsection consists in whole or in part of stock or securities issued by the corporation from which such property was received, and if in obedience to an order of the Securities and Exchange Commission such stock or securities (other than stock which is not preferred as to both dividends and assets) are sold and the proceeds derived therefrom are applied in whole or in part in the retirement or cancellation of stock or of securities of the recipient corporation outstanding at the time of such exchange, no gain or loss shall be recognized to the recipient corporation upon the sale of the stock or securities with respect to which such order was made; except that if any part of the proceeds derived from the sale of such stock or securities is not so applied, or if the amount of such proceeds is in excess of the fair market value of such stock or securities at the time of such exchange, the gain, if any, shall be recognized, but in an amount not in excess of the proceeds which are not so applied, or in an amount not more than the amount by which the proceeds derived from such sale exceed such fair market value, whichever is the greater.

(e) *Exchanges not solely in kind.*—(1) If an exchange (not within any of the provisions of subsection (d)) would be within the provisions of subsection (a) or (b) if it were not for the fact that property received in exchange consists not only of property permitted by such subsection to be received without the recognition of gain or loss, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property, and the loss, if any, to the recipient shall not be recognized.

(2) If an exchange is within the provisions of paragraph (1) of this subsection and if it includes a distribution which has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee such an amount of the gain recognized under such paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913. The remainder, if any, of the gain recognized under such paragraph (1) shall be taxed as a gain from the exchange of property.

(f) *Application of section.*—The provisions of this section shall not apply to an exchange or distribution unless (1) the order of the Securities and Exchange Commission in obedience to which such exchange or distribution was made recites that such exchange or distribution is necessary or appropriate to effectuate the provisions of section 11 (b) of the Public Utility Holding Company Act of 1935, (2) such order specifies and itemizes the stock and securities and other property which are ordered to be transferred and received upon such exchange or distribution, and (3) such exchange or distribution was made in obedience to such order and was completed within the time prescribed therefor in such order.

(g) *Non-application of other provisions.*—If an exchange or distribution made in obedience to an order of the Securities and Exchange Commission is within any of the provisions of this section and may also be considered to be within any of the provisions of section 112 (other than the provisions of paragraph (8) of subsection (b)), then the provisions of this section only shall apply.

ART. 371–0. *Terms used.*—The following terms are defined in section 373 and when used in this article and articles 371–1 to 373–1 shall have the meanings therein assigned to them: "Order of the Securities and Exchange Commission"; "registered holding company"; "holding-company system"; "associate company"; "majority-owned subsidiary company"; "system group"; "nonexempt property"; and "stock or securities." Any other term used in this article and articles 371–1 to 373–1, which is defined in the Act, shall be given the respective definition contained in the Act.

ART. 371–1. *Purpose and scope of exception.*—The general rule is that the entire amount of gain or loss from the sale or exchange of property is to be recognized (see section 112 (a)) and that the entire amount received as a dividend is to be included in gross income (see sections 22 (a) and 115). Exceptions to the general rule are provided in section 112, one of which is that made by section 112 (b) (8) with respect to exchanges, sales, and distributions specifically described in section 371. Section 371 provides the extent to which gain or loss is not to be recognized on an exchange or sale, or the receipt of a distribution, made in obedience to an order of the Securities and Exchange Commission, which is issued to effectuate the provisions of section 11 (b) of the Public Utility Holding Company Act of 1935. Section 115 (c) provides that a distribution in liquidation of a corporation shall be treated as an exchange, and such a distribution is to be so treated under the provisions of Supplement R. The order of the Securities and Exchange Commission must be one requiring or approving action which the Commission finds to be necessary or appropriate to effect a simplification or geographical integration of a particular public utility holding-company system. For specific requirements with respect to an order of the Securities and Exchange Commission, see section 371 (f).

The requirements for nonrecognition of gain or loss as provided in section 371 are precisely stated with respect to the following four general types of transactions:

(1) The exchange that is provided for in section 371 (a), in which stock or securities in a registered holding company or a majority-owned subsidiary company are exchanged for stock or securities.

(2) The exchange that is provided for in section 371 (b), in which a registered holding company or an associate company of a registered holding company exchanges property for property.

(3) The distribution that is provided for in section 371 (c), in which stock or securities are distributed to a share holder in a corporation which is a registered holding company or a majority-owned subsidiary company.

(4) The transfer that is provided for in section 371 (d), in which a corporation which is a member of a system group transfers property to another member of the same system group.

Certain rules with respect to the receipt of nonexempt property on an exchange described in section 371 (a) or (b) are prescribed in section 371 (e).

These new exceptions to the general rule are to be strictly construed as in the case of the other exceptions in section 112. Unless both the purpose and the specific requirements of Supplement R are clearly met, the recognition of gain or loss upon the exchange, sale, or distribution will not be postponed under Supplement R. Moreover, even though a taxable transaction occurs in connection or simultaneously with a realization of gain or loss to which nonrecognition is accorded, nevertheless, as under the various provisions of section 112, nonrecognition will not be accorded to such taxable transaction. In other words, the provisions of section 371 do not extend in any case to gain or loss other than that realized from and directly attributable to a disposition of property as such, or the receipt of a corporate distribution as such, in an exchange, sale, or distribution specifically described in section 371.

The application of the provisions of Supplement R is intended to result only in postponing the recognition of gain or loss until a disposition of property is made which is not covered by such provisions, and the continuation of the basis as provided in section 372 is designed to effect this result. Although the time of recognition may be shifted, there must be a true reflection of income in all cases, and it is intended that the provisions of Supplement R shall not be construed or applied in such a way as to defeat this purpose.

ART. 371–2. *Exchanges of stock or securities solely for stock or securities.*—The exchange, without the recognition of gain or loss, that is provided for in section 371 (a) must be one in which stock or securities in a corporation which is a registered holding company or a majority-owned subsidiary company are exchanged solely for stock or securities other than stock or securities which constitute nonexempt property. An exchange is not within the provisions of section 371 (a), unless the stock or securities transferred and those received are stock or securities as defined by section 373 (f). The stock or securities which may be received without the recognition of gain or loss are not limited to stock or securities in the corporation from which they are received. An exchange within the provisions of section 371 (a) may be a transaction between the holder of stock or securities and the corporation which issued the stock or securities. Also the exchange may be made by a holder of stock or securities with an associate company (*i. e.*, a corporation in the same holding-company system with the issuing corporation) which is a registered holding company or a majority-owned subsidiary company. In either case, the nonrecognition provisions of section 371 (a) apply only to the holder of the stock or securities. However, the transferee corporation must be acting in obedience to an order of the Securities and Exchange Commission directed to such corporation, if no gain or loss is to be recognized to the holder of the stock or securities who makes the exchange with such corporation. See also section 371 (b), in case the holder of the stock or securities is a registered holding company or an associate company of a registered holding company. An exchange is not within the provisions of section 371 (a) if it is within the provisions of section 371 (d), relating to transfers within a system group. For further limitations, see section 371 (f).

ART. 371–3. *Exchanges of property for property by corporations.*—The nonrecognition of gain or loss provided for in section 371 (b) is limited to an exchange by a transferor corporation which is (1) a registered holding company or (2) an associate company of a registered holding company. No restriction is imposed with respect to the class of property which may be transferred by the transferor corporation, but in order that all of the transferor corporation's gain from the exchange be nonrecognized (see section 371 (e)), no part of the property received by such corporation may consist of nonexempt property, though the receipt, in part, of nonexempt property by the transferor corporation does not prevent nonrecognition of all of its loss from the exchange under section 371 (e). It is essential to the nonrecognition either of gain or loss that in making the exchange the transferor corporation shall be acting in obedience to an order of the Securities and Exchange Commission reciting that such exchange by the transferor corporation is necessary or appropriate to the integration or simplification of the holding company system of which such corporation is a member. An exchange is not within the provisions of section 371 (b), if it is within the provisions of section 371 (d), relating to transfers within a system group. For further limitations, see section 371 (f).

Example: The A Corporation, a registered holding company, is a member of holding-company system No. 1 which comprises an integrated utility system in region X, except for the fact that the A Corporation owns all of the voting stock of the B Corporation with transmission lines in region Y. The transmission lines of the B Corporation have an adjusted basis of $300,000 and a fair market value of $325,000. The C Corporation, a registered holding company, is a member of holding-company system No. 2 which comprises an integrated utility system in region Y, except for the fact that the C Corporation owns all of the voting stock of the D Corporation, an operating company with a generating plant and transmission lines in region X. The generating plant and transmission lines of the D Corporation have an adjusted basis of $275,000 and a fair market value of $325,000. In obedience to an appropriate order of the Securities and Exchange Commission relative to the integration of holding-company system No. 1, the B Corporation transfers its transmission lines in region Y to the D Corporation in exchange for the generating plant and transmission lines of the D Corporation in region X. Under section 371 (b), no gain is recognized to the B Corporation upon the exchange. However, the provisions of section 371 (b) do not apply to the disposition by the D Corporation of its generating plant and transmission lines in region X unless such disposition is made in obedience to an appropriate order of the Securities and Exchange Commission which relates to such disposition and recites that such disposition is necessary or appropriate to the integration of holding-company system No. 2.

ART. 371–4. *Distribution solely of stock or securities.*—If, without any surrender of his stock or securities as defined in section 373 (f), a shareholder in a corporation which is a registered holding company or a majority-owned subsidiary company receives stock or securities in such corporation or owned by such corporation, no gain to the shareholder will be recognized with respect to the stock or securities received by such shareholder which do not constitute nonexempt property, if the distribution to such shareholder is made by the distributing corporation in obedience to an order of the Securities and Exchange Commission directed to such corporation. A distribution is not within the provisions of section 371 (c) if it is within the provisions of section 371 (d), relating to transfers within a system group. A distribution is also not within the provisions of section 371 (c) if it involves a surrender by the shareholder of stock or securities or a transfer by the shareholder of property in exchange for the stock or securities received by the shareholder. For further limitations, see section 371 (f).

ART. 371–5. *Transfers within system group.*—The nonrecognition of gain or loss provided for in section 371 (d) (1) is applicable to an exchange of property for other property (including money and other nonexempt property). In order for any exchange to come within such section, all the parties to the exchange must be corporations which are members of the same system group. The term "system group" is defined in section 373 (d).

Section 371 (d) (1) also provides for nonrecognition of gain to a corporation which is a member of a system group if property (including money or other nonexempt property) is distributed to such corporation as a shareholder in a corporation which is a member of the same system group, without the surrender by such shareholder of stock or securities in the distributing corporation.

As stated in article 371–1, nonrecognition of gain or loss will not be accorded to a transaction not clearly provided for

in Supplement R, even though such transaction occurs simultaneously or in connection with an exchange, sale, or distribution to which nonrecognition is specifically accorded. Therefore, nonrecognition will not be accorded to any gain or loss realized from the discharge, or the removal of the burden, of the pecuniary obligations of a member of a system group, even though such obligations are acquired upon a transfer or distribution specifically described in section 371 (d) (1); but the fact that the acquisition of such obligations was upon a transfer or distribution specifically described in section 371 (d) (1) will, because of the basis provisions of section 372 (d), affect the cost to the member of such discharge or its equivalent. Thus, section 371 (d) (1) does not provide for the nonrecognition of any gain or loss realized from the discharge of the indebtedness of a member of a system group as the result of the acquisition in exchange, sale, or distribution of its own bonds, notes, or other evidences of indebtedness which were acquired by another member of the same system group for a consideration less or more than the issuing price thereof (with proper adjustments for amortization of premiums or discounts).

Example: Suppose that the A Corporation and the B Corporation are both members of the same system group; that the A Corporation holds at a cost of $900 a bond issued by the B Corporation at par, $1,000; and that the A Corporation and the B Corporation enter into an exchange subject to the provisions of section 371 (d) (1) in which the $1,000 bond of the B Corporation is transferred from the A Corporation to the B Corporation. The $900 basis reflecting the cost to the A Corporation which would have been the basis available to the B Corporation if the property transferred to it had been something other than its own securities (see article 372–4) will, in this type of transaction, reflect the cost to the B Corporation of effecting a retirement of its own $1,000 bond. The $100 gain of the B Corporation reflected in the retirement will therefore be recognized.

No exchange or distribution may be made without the recognition of gain or loss as provided for in section 371 (d) (1), unless all the corporations which are parties to such exchange or distribution are acting in obedience to an order of the Securities and Exchange Commission. If an exchange or distribution is within the provisions of section 371 (d) (1) and also may be considered to be within some other provision of section 371, it shall be considered that only the provisions of section 371 (d) (1) apply and that the nonrecognition of gain or loss upon such exchange or distribution is by virtue of that section.

ART. 371–6. *Sale of stock or securities received upon exchange by members of system group.*—Section 371 (d) (2) provides that to the extent that property received upon an exchange by corporations which are members of the same system group consists of stock or securities *issued* by the corporation from which such property was received, such stock or securities may, under certain specifically described circumstances, be sold to a party not a member of the system group, without the recognition of gain or loss to the selling corporation. The nonrecognition of gain or loss is limited, in the case of stock, to a sale of stock which is preferred as to both dividends and assets. The stock or securities must have been received upon an exchange with respect to which section 371 (d) (1) operated to prevent recognition of gain or loss to any party to the exchange. Nonrecognition of gain or loss upon the sale of such stock or securities is permitted only if the proceeds derived from the sale are applied in retirement or cancellation of stock or securities of the selling corporation which were outstanding at the time the exchange was made. It is also essential to nonrecognition of gain or loss upon the sale that both the sale of the stock or securities and the application of the proceeds derived therefrom be made in obedience to an order of the Securities and Exchange Commission. If any part of the proceeds derived from the sale is not applied in making the required retirement or cancellation of stock or securities and if the sale is otherwise within the provisions of section 371 (d) (2), the gain resulting from the sale shall be recognized, but in an amount not in excess of the proceeds which are not so applied. In any event, if the proceeds derived from the sale of the stock or securities exceed the fair market value of such stock or securities at the time of the exchange through which they were acquired by the selling corporation, the gain resulting from the sale is to be recognized to the extent of such excess. Section 371 (d) (2) does not provide for the nonrecognition of any gain resulting from the retirement of bonds, notes, or other evidences of indebtedness for a consideration less than the issuing price thereof. Also, that section does not provide for the nonrecognition of gain or loss upon the sale of any stock or securities received upon a distribution or otherwise than upon an exchange.

Example: The X Corporation and the Y Corporation, both of which make their income tax returns on a calendar year basis, are members of the same system group. As part of an exchange in which section 371 (d) (1) is applicable the Y Corporation on June 1, 1938, issues to the X Corporation 1,000 shares of class A stock, preferred as to both dividends and assets. The fair market value of such stock at the time of issuance is $90,000 and its basis to the X Corporation is $75,000. On December 1, 1938, in obedience to an appropriate order of the Securities and Exchange Commission, the X Corporation sells all of such stock to the public for $100,000 and applies $95,000 of this amount to the retirement of its own bonds, which were outstanding on June 1, 1938. The remaining $5,000 is not used to retire any of the X Corporation's stock or securities. Of the total gain of $25,000 realized on the disposition of the Y Corporation stock only $10,000 is recognized, being the difference between the fair market value of the stock when acquired and the amount for which it was sold, since such amount is greater than the portion ($5,000) of the proceeds not applied to the retirement of the X Corporation's stock or securities.

If in the above example the stock acquired by the X Corporation had not been stock of the Y Corporation issued to the X Corporation or if it had been stock not preferred as to both dividends and assets, the full amount of the gain ($25,000) realized upon its disposition would have been recognized, regardless of what was done with the proceeds.

ART. 371–7. *Exchanges in which money or other nonexempt property is received.*—Under section 371 (e) (1), if in any exchange (not within any of the provisions of section 371 (d)) in which (*a*) stock or securities in a corporation which is a registered holding company or a majority-owned subsidiary are exchanged for stock or securities as provided for in section 371 (a), or (*b*) property of a corporation which is a registered holding company or an associate company of a registered holding company is exchanged for other property as provided for in section 371 (b), there is received by the taxpayer money or other nonexempt property (in addition to property permitted to be received without recognition of gain), then—

(1) The gain, if any, to the taxpayer is to be recognized in an amount not in excess of the sum of the money and the fair market value of the other nonexempt property, but

(2) The loss, if any, to the taxpayer from such an exchange is not to be recognized to any extent.

If money or other nonexempt property is received from a corporation in an exchange described in this article and if the distribution of such money or other nonexempt property by or on behalf of such corporation has the effect of the distribution of a taxable dividend, then, as provided in section 371 (e) (2), there shall be taxed to each distributee (1) as a dividend, such an amount of the gain recognized on the exchange as is not in excess of the distributee's ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913, and (2) the remainder of the gain so recognized shall be taxed as a gain from the exchange of property.

ART. 371–8. *Requirements with respect to order of Securities and Exchange Commission.*—The term "order of the Securities and Exchange Commission" is defined in section 373 (a). In addition to the requirements specified in that defini-

tion, section 371 (f) provides that the provisions of section 371 shall not apply to an exchange or distribution unless each of the following requirements is met:

(1) The order of the Securities and Exchange Commission must recite that the exchange or distribution is necessary or appropriate to effectuate the provisions of section 11 (b) of the Public Utility Holding Company Act of 1935.

(2) The order shall specify and itemize the stock and securities and other property (including money) which are ordered to be transferred and received upon the exchange or distribution, so as clearly to identify such property.

(3) The exchange or distribution shall be made in obedience to the order and shall be completed within the time prescribed in such order.

These requirements were not designed merely to simplify the administration of the provisions of section 371, and they are not to be considered as pertaining only to administrative matters. Each one of the three requirements is of the essence, and must be met if gain or loss is not to be recognized upon the transaction.

ART. 371–9. *Nonapplication of other provisions of the Act.*—The effect of section 371 (g) is that an exchange, sale, or distribution which is within section 371 shall, with respect to the nonrecognition of gain or loss and the determination of basis, be governed only by Supplement R, the purpose being to prevent overlapping of the provisions of such supplement and other provisions of the Act. In other words, if by virtue of section 371 any portion of a person's gain or loss on any particular exchange, sale or distribution is not to be recognized, then the gain or loss of such person shall be nonrecognized only to the extent provided in section 371, regardless of what the result might have been under section 112 if Supplement R had not been enacted; and similarly, the basis in the hands of such person of the property received by him in such transaction shall be the basis provided by section 372, regardless of what the basis of such property might have been under section 113 if Supplement R had not been enacted. On the other hand, if section 371 does not provide for the nonrecognition of any portion of a person's gain or loss (whether or not such person is another party to the same transaction referred to above), then the gain or loss of such person shall be recognized or nonrecognized to the extent provided for by other provisions of the Act as if Supplement R had not been enacted; and similarly, the basis in his hands of the property received by him in such transaction shall be the basis provided by other provisions of the Act as if Supplement R had not been enacted.

ART. 371–10. *Records to be kept and information to be filed with returns.*—(*a*) Every holder of stock or securities who receives stock or securities and other property (including money) upon an exchange shall, if the exchange is made with a corporation acting in obedience to an order of the Securities and Exchange Commission, file as a part of his income tax return for the taxable year in which the exchange takes place a complete statement of all facts pertinent to the nonrecognition of gain or loss upon such exchange, including—

(1) A clear description of the stock or securities transferred in the exchange, together with a statement of the cost or other basis of such stock or securities.

(2) The name and address of the corporation from which the stock or securities were received in the exchange.

(3) A statement of the amount of stock or securities and other property (including money) received from the exchange. The amount of each kind of stock or securities and other property received shall be set forth upon the basis of the fair market value thereof at the date of the exchange.

(*b*) Each corporation which is a party to an exchange made in obedience to an order of the Securities and Exchange Commission directed to such corporation shall file as a part of its income tax return for its taxable year in which the exchange takes place a complete statement of all facts pertinent to the nonrecognition of gain or loss upon such exchange, including—

(1) A copy of the order of the Securities and Exchange Commission directed to such corporation, in obedience to which the exchange was made.

(2) A certified copy of the corporate resolution authorizing the exchange.

(3) A clear description of all property, including all stock or securities, transferred in the exchange, together with a complete statement of the cost or other basis of each class of property.

(4) The date of acquisition of any stock or securities transferred in the exchange, and, if any of such stock or securities were acquired by the corporation in obedience to an order of the Securities and Exchange Commission, a copy of such order.

(5) The name and address of all persons to whom any property was transferred in the exchange.

(6) If any property transferred in the exchange was transferred to another corporation, a copy of any order of the Securities and Exchange Commission directed to the other corporation, in obedience to which the exchange was made by such other corporation.

(7) If the corporation transfers any nonexempt property, the amount of the undistributed earnings and profits of the corporation accumulated after February 28, 1913, to the time of the exchange.

(8) A statement of the amount of stock or securities and other property (including money) received upon the exchange, including a statement of all distributions or other disposition made thereof. The amount of each kind of stock or securities and other property received shall be stated on the basis of the fair market value thereof at the date of the exhange.

(9) A statement showing as to each class of its stock the number of shares and percentage owned by any other corporation, the voting rights and voting power, and the preference (if any) as to both dividends and assets.

(*c*) Each shareholder who receives stock or securities or other property (including money) upon a distribution made by a corporation in obedience to an order of the Securities and Exchange Commission shall file as a part of his income tax return for the taxable year in which such distribution is received a complete statement of all facts pertinent to the nonrecognition of gain upon such distribution, including—

(1) The name and address of the corporation from which the distribution is received.

(2) A statement of the amount of stock or securities or other property received upon the distribution, including (in case the shareholder is a corporation) a statement of all distributions or other disposition made of such stock or securities or other property by the shareholder. The amount of each class of stock or securities and each kind of property shall be stated on the basis of the fair market value thereof at the date of the distribution.

If the shareholder is a corporation, a statement showing as to each class of its stock the number of shares and percentage owned by a registered holding company or a majority-owned subsidiary company of a registered holding company, the voting rights and voting power, and the preference (if any) as to both dividends and assets.

(*d*) Every corporation making a distribution in obedience to an order of the Securities and Exchange Commission shall file as a part of its income tax return for its taxable year in which the distribution is made a complete statement of all facts pertinent to the nonrecognition of gain to the distributee upon such distribution, including—

(1) A copy of the order of the Securities and Exchange Commission, in obedience to which the distribution was made.

(2) A certified copy of the corporate resolution authorizing the distribution.

(3) A statement of the amount of stock or securities or other property (including money) distributed to each shareholder. The amount of each kind of stock or securities or other property shall be stated on the basis of the fair market value thereof at the date of the distribution.

(4) The date of acquistion of the stock or securities distributed, and, if any of such stock or securities were

acquired by the distributing corporation in obedience to an order of the Securities and Exchange Commission, a copy of such order.

(5) The amount of the undistributed earnings and profits of the corporation accumulated after February 28, 1913, to the time of the distribution.

(6) A statement showing as to each class of its stock the number of shares and percentage owned by any other corporation, the voting rights and voting power, and the preference (if any) as to both dividends and assets.

(e) Each corporation which is a member of a system group and which in obedience to an order of the Securities and Exchange Commission sells stock or securities received upon an exchange (made in obedience to an order of the Securities and Exchange Commission) and applies the proceeds derived therefrom in retirement or cancellation of its own stock or securities shall file as a part of its income tax return for the taxable year in which the sale is made a complete statement of all facts pertaining to the nonrecognition of gain or loss upon such sale, including—

(1) A copy of the order of the Securities and Exchange Commission in obedience to which the sale was made.

(2) A copy of the order of the Securities and Exchange Commission in obedience to which the proceeds derived from the sale were applied in whole or in part in the retirement or cancellation of its stock or securities.

(3) A certified copy of the corporate resolutions authorizing the sale of the stock or securities and the application of the proceeds derived therefrom.

(4) A clear description of the stock or securities sold, including the name and address of the corporation by which they were issued.

(5) The date of acquisition of the stock or securities sold, together with a statement of the fair market value of such stock or securities at the date of acquisition, and a copy of all orders of the Securities and Exchange Commission in obedience to which such stock or securities were acquired.

(6) The amount of the proceeds derived from such sale.

(7) The portion of the proceeds of such sale which was applied in retirement or cancellation of its stock or securities, together with a statement showing how long such stock or securities were outstanding prior to retirement or cancellation.

(8) The issuing price of its stock or securities which were retired or canceled.

(f) Permanent records in substantial form shall be kept by every taxpayer who participates in an exchange or distribution made in obedience to an order of the Securities and Exchange Commission, showing the cost or other basis of the property transferred and the amount of stock or securities and other property (including money) received, in order to facilitate the determination of gain or loss from a subsequent disposition of such stock or securities and other property received on the exchange or distribution.

SEC. 372. *Basis for determining gain or loss.*—(a) *Exchanges generally.*—If the property was acquired upon an exchange subject to the provisions of section 371 (a), (b), or (e), the basis shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under the law applicable to the year in which the exchange was made. If the property so acquired consisted in part of the type of property permitted by section 371 (a) or (b) to be received without the recognition of gain or loss, and in part of nonexempt property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such nonexempt property (other than money) an amount equivalent to its fair market value at the date of the exchange. This subsection shall not apply to property acquired by a corporation by the issuance of its stock or securities as the consideration in whole or in part for the transfer of the property to it.

(b) *Transfers to corporations.*—If, in connection with a transfer subject to the provisions of section 371 (a), (b), or (e), the property was acquired by a corporation, either as paid-in surplus or as a contribution to capital, or in consideration for stock or securities issued by the corporation receiving the property (including cases where part of the consideration for the transfer of such property to the corporation consisted of property or money in addition to such stock or securities), then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made.

(c) *Distributions of stock or securities.*—If the stock or securities were received in a distribution subject to the provisions of section 371 (c), then the basis in the case of the stock in respect of which the distribution was made shall be apportioned, under rules and regulations prescribed by the Commissioner with the approval of the Secretary, between such stock and the stock or securities distributed.

(d) *Transfers within system group.*—If the property was acquired by a corporation which is a member of a system group upon a transfer or distribution described in section 371 (d) (1), then the basis shall be the same as it would be in the hands of the transferor; except that if such property is stock or securities issued by the corporation from which such stock or securities were received and they were issued (1) as the sole consideration for the property transferred to such corporation, then the basis of such stock or securities shall be either (A) the same as in the case of the property transferred therefor, or (B) the fair market value of such stock or securities at the time of their receipt, whichever is the lower; or (2) as part consideration for the property transferred to such corporation, then the basis of such stock or securities shall be either (A) an amount which bears the same ratio to the basis of the property transferred as the fair market value of such stock or securities at the time of their receipt bears to the total fair market value of the entire consideration received, or (B) the fair market value of such stock or securities at the time of their receipt, whichever is the lower.

ART. 372–0. *Basis for determining gain or loss.*—Section 113 (a) (17) provides that if property is acquired in any manner described in section 372, the basis shall be that prescribed in such section with respect to such property. Section 372 therefore expands section 113 (a) in order to make adequate provisions with respect to the basis of property acquired in a transfer made in obedience to an order of the Securities and Exchange Commission in connection with which the recognition of gain or loss is prohibited by the provisions of section 112 (b) (8) and section 371 with respect to the whole or any part of the property received. In general, it is intended that the basis for determining gain or loss pertaining to the property prior to its transfer, as well as the basis for determining the amount of depreciation or depletion deductible and the amount of earnings or profits available for distribution, shall continue notwithstanding the nontaxable conversion of the asset in form or its change in ownership. The continuance of the basis may be reflected in a shift thereof from one asset to another in the hands of the same owner, or in its transfer with the property from one owner into the hands of another. See also article 371–1.

ART. 372–1. *Basis of property acquired upon exchanges under section 371 (a), 371 (b), or 371 (e).*—In the case of an exchange of stock or securities for stock or securities as described in section 371 (a), or an exchange of property for property as described in section 371 (b), if no part of the gain or loss upon such exchange was recognized under section 371, the basis of the property acquired is the same as the basis of the property transferred by the taxpayer with proper adjustments to the date of the exchange.

If, in an exchange of stock or securities as described in section 371 (a), or in an exchange of property for property as described in section 371 (b), gain to the taxpayer was recognized under section 371 (e), on account of the receipt of money, the basis of the property acquired is the basis of the property transferred (adjusted to the date of the exchange), decreased by the amount of money received and increased by the amount of gain recognized upon the exchange. If, upon such exchange, there were received by the taxpayer money and other nonexempt property (not permitted to be received without the recognition of gain), and gain from the transaction was recognized under section 371 (e), the basis (adjusted to the date of the exchange) of the property transferred by the taxpayer, decreased by the amount of money received and increased by the amount of gain recognized, must be apportioned to and is the basis of the properties (other than money) received on the exchange. For the purpose of the allocation of such basis to the properties received, there must be assigned to the nonexempt property (other than money)

an amount equivalent to its fair market value at the date of the exchange.

Section 371 (e) provides that no loss may be recognized on an exchange of stock or securities for stock or securities as described in section 371 (a), or on an exchange of property for property as described in section 371 (b), although the taxpayer receives money or other nonexempt property from the transaction. However, the basis of the property (other than money) received by the taxpayer is the basis (adjusted to the date of the exchange) of the property transferred, decreased by the amount of money received. This basis must be apportioned to the properties received, and for this purpose there must be allocated to the nonexempt property (other than money) an amount of such basis equivalent to the fair market value of such nonexempt property at the date of the exchange.

Section 372 (a) does not apply in ascertaining the basis of property acquired by a corporation by the issuance of its stock or securities as the consideration in whole or in part for the transfer of the property to it. For the rule in such cases, see section 372 (b).

ART. 372–2. *Basis of property acquired by corporation under section 371 (a), 371 (b), or 371 (e) as contribution of capital or surplus, or in consideration for its own stock or securities.*—If, in connection with an exchange of stock or securities for stock or securities as described in section 371 (a), or an exchange of property for property as described in section 371 (b), or an exchange as described in section 371 (e), property is acquired by a corporation by the issuance of its stock or securities, the basis of such property shall be determined under section 372 (b). If the corporation issued its stock or securities as part or sole consideration for the property acquired, the basis of the property in the hands of the acquiring corporation is the basis (adjusted to the date of the exchange) which the property would have had in the hands of the transferor if the transfer had not been made, increased in the amount of gain or decreased in the amount of loss recognized under section 371 to the transferor upon the transfer. If any property is acquired by a corporation from a shareholder as paid-in surplus, or from any person as a contribution to capital, the basis of the property to the corporation is the basis (adjusted to the date of acquisition) of the property in the hands of the transferor.

ART. 372–3. *Basis of stock or securities acquired by shareholder upon tax-free distribution under section 371 (c).*—Under section 372 (c), if there was distributed to a shareholder in a corporation which is a registered holding company or a majority-owned subsidiary company stock or securities (other than stock or securities which are nonexempt property), and if by virtue of section 371 (c) no gain was recognized to the shareholder upon such distribution, then the basis of the stock in respect of which the distribution was made must be apportioned between such stock and the stock or securities so distributed to the shareholder. The basis of the old shares and the stock or securities received upon the distribution shall be determined in accordance with the following rules:

(1) If the stock or securities received upon the distribution consist solely of stock in the distributing corporation and the stock received is all of substantially the same character and preference as the stock in respect of which the distribution is made, the basis of each share will be the quotient of the cost or other basis of the old shares of stock divided by the total number of the old and the new shares.

(2) If the stock or securities received upon the distribution are in whole or in part stock in a corporation other than the distributing corporation, or are in whole or in part stock of a character or preference materially different from the stock in respect of which the distribution is made, or if the distribution consists in whole or in part of securities other than stock, the cost or other basis of the stock in respect of which the distribution is made shall be apportioned between such stock and the stock or securities distributed in proportion, as nearly as may be, to the respective values of each class of stock or security, old and new, at the time of such distribution, and the basis of each share of stock or unit of security will be the quotient of the cost or other basis of the class of stock or security to which such share or unit belongs, divided by the number of shares or units in the class. Within the meaning of the foregoing provisions stocks or securities in one corporation are different in class from stocks or securities in another corporation, and, in general, any material difference in character or preference or terms sufficient to distinguish one stock or security from another stock or security so that different values may properly be assigned thereto, will constitute a difference in class. As to the basis of stock or securities distributed by one member of a system group to another member of the same system group, see section 372 (d).

ART. 372–4. *Basis of property acquired under section 371 (d) in transactions between corporations of the same system group.*—If property was acquired by a corporation which is a member of a system group, from a corporation which is a member of the same system group, upon a transfer or distribution described in section 371 (d) (1), then as a general rule the basis of such property in the hands of the acquiring corporation is the basis which such property would have had in the hands of the transferor if the transfer or distribution had not been made.

Except as otherwise indicated in this article, this rule will apply equally to cases in which the consideration for the property acquired consists of stock or securities, money, and other property, or any of them, but it is contemplated that an ultimate true reflection of income will be obtained in all cases, notwithstanding any peculiarities in form which the various transactions may assume. See the example in article 371–5.

An exception to this general rule is provided for in case the property acquired consists of stock or securities issued by the corporation from which such stock or securities were received. If such stock or securities were the sole consideration for the property transferred to the corporation issuing such stock or securities, then the basis of the stock or securities shall be (1) the same as the basis (adjusted to the time of the transfer) of the property transferred for such stock or securities, or (2) the fair market value of such stock or securities at the time of their receipt, whichever is the lower. If such stock or securities constituted only part consideration for the property transferred to the corporation issuing such stock or securities, then the basis shall be an amount which bears the same ratio to the basis of the property transferred as the fair market value of such stock or securities on their receipt bears to the total fair market value of the entire consideration received, except that the fair market value of such stock or securities at the time of their receipt shall be the basis therefor, if such value is lower than such amount.

Example: Suppose the A Corporation has property with an adjusted basis of $600,000 and in an exchange in which section 371 (d) (1) is applicable, transfers such property to the B Corporation in exchange for a total consideration of $1,000,000, consisting of (1) cash in the amount of $100,000, (2) tangible property having a fair market value of $400,000 and an adjusted basis in the hands of the B Corporation of $300,000, and (3) stock or securities issued by the B Corporation with a par value and a fair market value as of the date of their receipt in the amount of $500,000. The basis to the B Corporation of the property received by it is $600,000, which is the adjusted basis of such property in the hands of the A Corporation. The basis to the A Corporation of the assets (other than cash) received by it is as follows: Tangible property, $300,000, the adjusted basis of such property to the B Corporation, the former owner; stock or securities issued by the B Corporation, $300,000, an amount equal to 500,000/1,000,000ths of $600,000.

Suppose that the property of the A Corporation transferred to the B Corporation had an adjusted basis of $1,100,000 instead of $600,000, and that all other factors in the illustration in the preceding paragraph remain the same. In such case the basis to the A Corpora-

tion of the stock or securities in the B Corporation is $500,000, which was the fair market value of such stock or securities at the time of their receipt by the A Corporation, and not the amount established as 500,000/1,000,000ths of $1,100,000, or $550,000.

SEC. 373. *Definitions.*—As used in this supplement—

(a) the term "order of the Securities and Exchange Commission" means an order (1) issued after the date of enactment of this Act and prior to January 1, 1940, by the Securities and Exchange Commission to effectuate the provisions of section 11 (b) of the Public Utility Holding Company Act of 1935, or (2) issued by the Commission subsequent to December 31, 1939, in which it is expressly stated that an order of the character specified in clause (1) is amended or supplemented, and (3) which has become final in accordance with law.

(b) The terms "registered holding company", "holding-company system", and "associate company" shall have the meanings assigned to them by section 2 of the Public Utility Holding Company Act of 1935.

(c) The term "majority-owned subsidiary company" of a registered holding company means a corporation, stock of which, representing in the aggregate more than 50 per centum of the total combined voting power of all classes of stock of such corporation entitled to vote (not including stock which is entitled to vote only upon default or nonpayment of dividends or other special circumstances) is owned wholly by such registered holding company, or partly by such registered holding company and partly by one or more majority-owned subsidiary companies thereof, or by one or more majority-owned subsidiary companies of such registered holding company.

(d) The term "system group" means one or more chains of corporations connected through stock ownership with a common parent corporation if—

(1) At least 90 per centum of each class of the stock (other than stock which is preferred as to both dividends and assets) of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations; and

(2) The common parent corporation owns directly at least 90 per centum of each class of the stock (other than stock which is preferred as to both dividends and assets) of at least one of the other corporations; and

(3) Each of the corporations is either a registered holding company or a majority-owned subsidiary company.

(e) The term "nonexempt property" means—

(1) Any consideration in the form of a cancellation or assumption of debts or other liabilities (including a continuance of encumbrances subject to which the property was transferred);

(2) Short-term obligations (including notes, drafts, bills of exchange, and bankers' acceptances) having a maturity at the time of issuance of not exceeding twenty-four months, exclusive of days of grace;

(3) Securities issued or guaranteed as to principal or interest by a government or subdivision thereof (including those issued by a corporation which is an instrumentality of a government or subdivision thereof);

(4) Stock or securities which were acquired after February 28, 1938, unless such stock or securities (other than obligations described as nonexempt property in paragraph (2) or (3), were acquired in obedience to an order of the Securities and Exchange Commission;

(5) Money, and the right to receive money not evidenced by a security other than an obligation described as nonexempt property in paragraph (2) or (3).

(f) The term "stock or securities" means shares of stock in any corporation, certificates of stock or interest in any corporation, notes, bonds, debentures, and evidences of indebtedness (including any evidence of an interest in or right to subscribe to or purchase any of the foregoing).

ART. 373–1. *Definitions*—(a) *"Order of the Securities and Exchange Commission."*—An order of the Securities and Exchange Commission as defined in section 373 (a) must be issued after May 28, 1938 (the date of the enactment of the Revenue Act of 1938), and must be issued under the authority of section 11 (b) or 11 (e) of the Public Utility Holding Company Act of 1935 to effectuate the provisions of section 11 (b) of such Act (or must amend or supplement an order so issued and expressly state that it amends or supplements such an order). In all cases the order must have become final in accordance with law; *i. e.*, it must be valid, outstanding, and not subject to further appeal. See further sections 373 (a) and 371 (f). Section 11 (b) of the Public Utility Holding Company Act of 1935 provides:

(b) It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system: *Provided, however,* That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems.

(2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system. In carrying out the provisions of this paragraph the Commission shall require each registered holding company (and any company in the same holding-company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company. Except for the purpose of fairly and equitably distributing voting power among the security holders of such company, nothing in this paragraph shall authorize the Commission to require any change in the corporate structure or existence of any company which is not a holding company, or of any company whose principal business is that of a public-utility company.

The Commission may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist. Any order made under this subsection shall be subject to judicial review as provided in section 24.

Section 11 (e) of the Public Utility Holding Company Act of 1935 provides:

(e) In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce and carry out the terms and provisions of such plan. If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of section 11, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer, under the direction of the court and in accordance with the plan theretofore approved by the court and the Commission, the assets so possessed.

(b) *"Registered holding company," "holding-company system," and "associate company."*—Under section 5 of the Public Utility Holding Company Act of 1935 any holding company may register by filing with the Securities and Exchange Commission a notification of registration, in such form as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. A holding company shall be deemed to be registered upon receipt by the Securities and

Exchange Commission of such notification of registration. The term "registered holding company" as used in these regulations means a holding company whose notification of registration has been so received and whose registration is still in effect under section 5 of the Public Utility Holding Company Act of 1935. Under section 2 (a) (7) of the Public Utility Holding Company Act of 1935, a corporation is a holding company (unless it is declared not to be such by the Securities and Exchange Commission), if such corporation directly or indirectly owns, controls, or holds with power to vote 10 percent or more of the outstanding voting securities of a public-utility company (*i. e.*, an electric utility company or a gas utility company as defined by such Act) or of any other holding company. A corporation is also a holding company if the Securities and Exchange Commission determines, after notice and opportunity for hearing, that such corporation directly or indirectly exercises (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility company (*i. e.*, an electric utility company or a gas utility company as defined by such Act) or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such corporation be subject to the obligations, duties, and liabilities imposed upon holding companies by the Public Utility Holding Company Act of 1935. An electric utility company is defined by section 2 (a) (3) of the Public Utility Holding Company Act of 1935 to mean a company which owns or operates facilities used for the generation, transmission, or distribution of electrical energy for sale, other than sale to tenants or employees of the company operating such facilities for their own use and not for resale; and a gas utility company is defined by section 2 (a) (4) of such Act to mean a company which owns or operates facilities used for the distribution at retail (other than distribution only in enclosed portable containers, or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power. However, under certain conditions the Securities and Exchange Commission may declare a company not to be an electric utility company or a gas utility company, as the case may be, in which event the company shall not be considered an electric utility company or a gas utility company.

The term "holding-company system" has the meaning assigned to it by section 2 (a) (9) of the Public Utility Holding Company Act of 1935, and hence means any holding company, together with all its subsidiary companies (*i. e.*, subsidiary companies within the meaning of section 2 (a) (8) of such Act, which in general include all companies 10 percent of whose outstanding voting securities is owned directly or indirectly by such holding company) and all mutual service companies of which such holding company or any subsidiary company thereof is a member company. The term "mutual service company" means a company approved as a mutual service company under section 13 of the Public Utility Holding Company Act of 1935. The term "member company" is defined by section 2 (a) (14) of such Act to mean a company which is a member of an association or group of companies mutually served by a mutual service company.

The term "associate company" has the meaning assigned to it by section 2 (a) (10) of the Public Utility Holding Company Act of 1935, and hence an associate company of a company is any company in the same holding-company system with such company.

(c) *"Majority-owned subsidiary company."*—The term "majority-owned subsidiary company" is defined in section 373 (c). Direct ownership by a registered holding company of more than 50 percent of the specified stock of another corporation is not necessary to constitute such corporation a majority-owned subsidiary company. To illustrate, if the H Corporation, a registered holding company, owns 51 percent of the common stock of the A Corporation and 31 percent of the common stock of the B Corporation, and the A Corporation owns 20 percent of the common stock of the B Corporation (the common stock in each case being the only stock entitled to vote), both the A Corporation and the B Corporation are majority-owned subsidiary companies.

(d) *"System group."*—The term "system group" is defined in section 373 (d) to mean one or more chains of corporations connected through stock ownership with a common parent corporation, if at least 90 percent of each class of stock (other than stock preferred as to both dividends and assets) of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations and the common parent corporation owns directly at least 90 percent of each class of such stock of at least one of the other corporations; but no corporation is a member of a system group if it is not either a registered holding company or a majority-owned subsidiary company. It is to be observed that while the type of stock which must be at least 90 percent owned for the purpose of this definition (*i. e.*, stock not preferred as to both dividends and assets) may be different from the voting stock which must be more than 50 percent owned for the purpose of the definition of a majority-owned subsidiary company under section 373 (c), yet as a general rule both types of ownership tests must be met under section 373 (d), since a corporation, in order to be a member of a system group, must also be a registered holding company or a majority-owned subsidiary company.

(e) *"Nonexempt property."*—The term "nonexempt property" is defined by section 373 (e) to include—

(1) The amount of any consideration in the form of a cancellation or assumption of debts or other liabilities (including a continuance of encumbrances subject to which the property was transferred). To illustrate, if in obedience to an order of the Securities and Exchange Commission the X Corporation, a registered holding company, transfers property to the Y Corporation in exchange for property (not nonexempt property) with a fair market value of $500,000, the X Corporation receives $100,000 of nonexempt property, if for example,

(A) The Y Corporation cancels $100,000 of indebtedness owed to it by the X Corporation;

(B) The Y Corporation assumes an indebtedness of $100,000 owed by the X Corporation to another company, the A Corporation; or

(C) The Y Corporation takes over the property conveyed to it by the X Corporation subject to a mortgage of $100,000.

(2) Short-term obligations (including notes, drafts, bills of exchange, and bankers' acceptances) having a maturity at the time of issuance of not exceeding 24 months, exclusive of days of grace.

(3) Securities issued or guaranteed as to principal or interest by a government or subdivision thereof (including those issued by a corporation which is an instrumentality of a government or subdivision thereof).

(4) Stock or securities which were acquired after February 28, 1938, unless such stock or securities were acquired in obedience to an order of the Securities and Exchange Commission (as defined in section 373 (a)) and are not nonexempt property within the meaning of section 373 (e) (2) or (3).

(5) Money, and the right to receive money not evidenced by a security other than an obligation described as nonexempt property in section 373 (e) (2) or (3). The term "the right to receive money" includes, among other items, accounts receivable, claims for damages, and rights to refunds of taxes.

(f) *"Stock or securities."*—The term "stock or securities" is defined in section 373 (f) for the purposes of sections 371 to 373, inclusive. As therein defined the term includes voting trust certificates and stock rights or warrants.

CHAPTER XXXVII

Surtax on Personal Holding Companies

Title IA—Personal Holding Companies

SEC. 401. *Surtax on personal holding companies.*—There shall be levied, collected, and paid, for each taxable year, upon the undis-

tributed Title IA net income of every personal holding company (in addition to the taxes imposed by Title I) a surtax equal to the sum of the following:

(1) 65 per centum of the amount thereof not in excess of $2,000; plus

(2) 75 per centum of the amount thereof in excess of $2,000.

ART. 401–1. *Surtax on personal holding companies.*—Section 401 imposes for each taxable year beginning after December 31, 1937 (in addition to the taxes imposed by Title I), a graduated income tax or surtax upon corporations classified as personal holding companies and, under the circumstances specified in section 402 (c), upon an affiliated group of railroad corporations. Corporations so classified are exempt from the surtax on corporations improperly accumulating surplus imposed by section 102, but are not exempt from the other taxes imposed by Title I. Unlike the surtax imposed by section 102, the surtax imposed by section 401 applies to all personal holding companies defined as such in section 402 and article 402–1, regardless of whether or not they were formed or availed of to accumulate earnings or profits for the purpose of avoiding surtax upon shareholders. The surtax imposed by section 401 is 65 percent of the amount of the undistributed Title IA net income not in excess of $2,000, and 75 percent of the amount of the undistributed Title IA net income in excess of $2,000.

A foreign corporation, whether resident or nonresident, which is classified as a personal holding company under section 402 (not including a foreign personal holding company as defined in section 331) is subject to the tax imposed by section 401 with respect to its income from sources within the United States even though such income is not fixed or determinable annual or periodical income specified in section 231 (a). (See section 119.) The term "personal holding company" as used in Title IA does not include a foreign corporation if (1) its gross income from sources within the United States for the period specified in section 119 (a) (2) (B) is less than 50 percent of its total gross income from all sources and (2) all of its stock outstanding during the last half of the taxable year is owned by nonresident alien individuals, whether directly or indirectly through other foreign corporations.

SEC. 402. *Definition of personal holding company.*—(a) *General rule.*—For the purposes of this title, and Title I, the term "personal holding company" means any corporation if—

(1) *Gross income requirement.*—At least 80 per centum of its gross income for the taxable year is personal holding company income as defined in section 403; but if the corporation is a personal holding company with respect to any taxable year beginning after December 31, 1936, then, for each subsequent taxable year, the minimum percentage shall be 70 per centum in lieu of 80 per centum, until a taxable year during the whole of the last half of which the stock ownership required by paragraph (2) does not exist, or until the expiration of three consecutive taxable years in each of which less than 70 per centum of the gross income is personal holding company income; and

(2) *Stock ownership requirement.*—At any time during the last half of the taxable year more than 50 per centum in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals.

(b) *Exceptions.*—The term "personal holding company" does not include a corporation exempt from taxation under section 101, a bank as defined in section 104, a life insurance company, a surety company, a foreign personal holding company as defined in section 331, or a licensed personal finance company, under State supervision, at least 80 per centum of the gross income of which is lawful interest received from individuals each of whose indebtedness to such company did not at any time during the taxable year exceed $300 in principal amount, if such interest is not payable in advance or compounded and is computed only on unpaid balances.

(c) *Corporations making consolidated returns.*—If the common parent corporation of an affiliated group of corporations making a consolidated return under the provisions of section 141, satisfies the stock ownership requirement provided in section 402 (a) (2), and the income of such affiliated group, determined as provided in section 141, satisfies the gross income requirement provided in section 402 (a) (1), such affiliated group shall be subject to the surtax imposed by this title.

ART. 402–1. *Definition of personal holding company.*—A personal holding company is any corporation (other than a corporation specified in section 402 (b)) which for the taxable year meets (*a*) the gross income requirement specified in article 402–2, and (*b*) the stock ownership requirement specified in article 402–3. Both requirements must be satisfied and both must be met with respect to each taxable year.

ART. 402–2. *Gross income requirement.*—To meet the gross income requirement, it is necessary that either of the following percentages of gross income of the corporation for the taxable year be personal holding company income as defined in section 403:

(*a*) 80 percent or more; or

(*b*) 70 percent or more if the corporation has been classified as a personal holding company for any taxable year beginning after December 31, 1936, unless—

(1) a taxable year has intervened since the last taxable year for which it was so classified, during no part of the last half of which the stock ownership requirement specified in section 402 (a) (2) exists; or

(2) three consecutive years have intervened since the last taxable year for which it was so classified, during each of which its personal holding company income was less than 70 percent of its gross income.

In determining whether the personal holding company income is equal to the required percentage of the total gross income, the determination must not be made upon the basis of gross receipts, since gross income is not synonymous with gross receipts. For a further discussion of what constitutes "gross income," see section 22 (a) and the regulations prescribed under that section.

ART. 402–3. *Stock ownership requirement.*—To meet the stock ownership requirement, it is necessary that at some time during the last half of the taxable year more than 50 percent in value of the outstanding stock of the corporation be owned, directly or indirectly, by or for not more than five individuals. For such purpose, the ownership of the stock must be determined as provided in section 404 and articles 404 (a)–1 to 404 (a)–7 and article 404 (b)–1.

In the event of any change in the stock outstanding during the last half of the taxable year, whether in the number of shares or classes of stock, or whether in the ownership thereof, the conditions existing immediately prior and subsequent to each change must be taken into consideration.

In determining whether the statutory conditions with respect to stock ownership are present at any time during the last half of the taxable year, the phrase "in value" shall, in the light of all the circumstances, be deemed the value of the corporate stock outstanding at such time (not including treasury stock). This value may be determined upon the basis of the company's net worth, earning and dividend paying capacity, appreciation of assets, together with such other factors as have a bearing upon the value of the stock. If the value of the stock is greatly at variance with that reflected by the corporate books, the evidence of such value should be filed with the return. In any case where there are two or more classes of stock outstanding, the total value of all the stock should be allocated among the different classes according to the relative value of each class therein.

The rules stated in the last two preceding paragraphs are equally applicable in determining the stock ownership requirement specified in section 403 (e), relating to personal service contracts and in section 403 (f), relating to the use of corporation property by a shareholder. The stock ownership requirement specified in these sections relates, however, to the stock outstanding at any time during the entire taxable year and not merely during the last half thereof.

SEC. 403. *Personal holding company income.*—For the purposes of this title the term "personal holding company income" means the portion of the gross income which consists of:

(*a*) Dividends, interest (other than interest constituting rent as defined in subsection (g)), royalties (other than mineral, oil, or gas royalties), annuities.

(*b*) *Stock and securities transactions.*—Except in the case of regular dealers in stock or securities, gains from the sale or exchange of stock or securities.

(*c*) *Commodities transactions.*—Gains from futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange. This subsection shall not apply to gains by a producer, processor, merchant, or handler of the commodity which arise out of bona fide hedging transactions reasonably necessary to the conduct of its

business in the manner in which such business is customarily and usually conducted by others.

(*d*) *Estates and trusts.*—Accounts includible in computing the net income of the corporation under Supplement E of Title I; and gains from the sale or other disposition of any interest in an estate or trust.

(*e*) *Personal service contracts.*—(1) Amounts received under a contract under which the corporation is to furnish personal services; if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and (2) amounts received from the sale or other disposition of such a contract. This subsection shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(*f*) *Use of corporation property by shareholder.*—Amounts received as compensation (however designated and from whomsoever received) for the use of, or right to use, property of the corporation in any case where, at any time during the taxable year, 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for an individual entitled to the use of the property; whether such right is obtained directly from the corporation or by means of a sublease or other arrangement.

(*g*) *Rents.*—Rents, unless constituting 50 per centum or more of the gross income. For the purposes of this subsection the term "rents" means compensation, however designated, for the use of, or right to use, property, and the interest on debts owed to the corporation, to the extent such debts represent the price for which real property held primarily for sale to customers in the ordinary course of its trade or business was sold or exchanged by the corporation; but does not include amounts constituting personal holding company income under subsection (f).

(*h*) *Mineral, oil, or gas royalties.*—Mineral, oil, or gas royalties, unless (1) constituting 50 per centum or more of the gross income, and (2) the deductions allowable under section 23 (a) (relating to expenses) other than compensation for personal services rendered by shareholders, constitute 15 per centum or more of the gross income.

ART. 403–1. *Personal holding company income.*—The term "personal holding company income" means the portion of the gross income which consists of the following:

(1) *Dividends.*—The term "dividends" includes dividends as defined in section 115 (a), and amounts required to be included in gross income under section 337 (b). It does not include stock dividends (to the extent they do not constitute income to the shareholders within the meaning of the sixteenth amendment to the Constitution), liquidating dividends, or other capital distributions referred to in section 115 (c) and (d).

(2) *Interest (other than interest constituting rent).*—The term "interest" means any amounts, includable in gross income, received for the use of money loaned except that it does not include interest constituting rent (see subparagraph (10)).

(3) *Royalties (other than mineral, oil, or gas royalties).*—The term "royalties" includes amounts received for the privilege of using patents, copyrights, secret processes and formulas, good will, trade marks, trade brands, franchises, and other like property. It does not include rents, or overriding royalties received by an operating company. As used in this paragraph the term "overriding royalties" means amounts received from the sublessee by the operating company which originally leased and developed the natural resource property in respect of which such overriding royalties are paid.

(4) *Annuities.*—The term "annuities" includes annuities only to the extent includible in the computation of gross income. (See section 22 (b) (2).)

(5) *Gains from the sale or exchange of stock or securities.*—The term "gains from the sale or exchange of stock or securities" as used in section 403 (b) applies to all gains (including gains from liquidating dividends and other distributions from capital) from the sale or exchange of stock or securities includible in gross income. The term "stock or securities" as used in section 403 (b) includes shares or certificates of stock, or interest in any corporation (including any joint-stock company, insurance company, association, or other organization classified as a corporation by the Act), certificates of interest or participation in any profit-sharing agreement, or in any oil, gas, or other mineral royalty, or lease, collateral trust certificates, voting trust certificates, stock rights or warrants, bonds, debentures, certificates of indebtedness, notes, car trust certificates, bills of exchange, obligations issued by or on behalf of a Government, State, Territory, or political subdivision thereof. In the case of "regular dealers in stock or securities" the term does not include gains derived from the sale or exchange of stock or securities made in the normal course of business. The term "regular dealer in stock or securities" means corporations with an established place of business regularly engaged in the purchase of stock or securities and their resale to customers, but such corporations are not dealers with respect to stock or securities held for speculation or investment.

(6) *Gains from futures transactions in commodities.*—Gains from futures transactions in commodities include gains from futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange, but do not include gains from cash transactions or gains by a producer, processor, merchant, or handler of the commodity, which arise out of bona fide hedging transactions reasonably necessary to the conduct of its business in the manner in which such business is customarily and usually conducted by others. In general, personal holding company income includes gains on futures contracts which are speculative. Futures contracts representing true hedges against price fluctuations in spot goods are not speculative transactions, though not concurrent with spot transactions. Futures contracts which are not hedges against spot transactions are speculative unless they are hedges against concurrent futures or forward sales or purchases.

(7) *Income from estates and trusts.*—The income from estates and trusts which is to be included in personal holding company income consists of the income from estates and trusts which is required to be included in the gross income of the corporation under sections 161 to 169, together with the gains derived by the corporation from the sale or other disposition of any interest in an estate or trust.

(8) *Amounts received under personal service contracts.*—Amounts includible in personal holding company income as amounts received under personal service contracts consist of amounts received pursuant to a contract under which the corporation is to furnish personal services, and amounts received from a sale or other disposition of such a contract, if—

(*a*) some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and

(*b*) at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description), as the one to perform such services. For this purpose the stock ownership must be determined as provided in section 404 and articles 404 (a)–1 to 404 (a)–7, article 404 (b)–1 and the last paragraph of article 402–3.

The application of section 403 (a) may be illustrated by the following examples:

Example (1): A, whose profession is that of an actor, owns all of the outstanding capital stock of the M Corporation. The M Corporation entered into a contract with A under which A was to perform personal services for the person or persons whom the M Corporation might designate, in consideration of which A was to receive $10,000 a year from the M Corporation. The M Corporation entered into a contract with the O Corporation in which A was designated to perform personal services for the O Corporation in consideration of which the O Corporation was to pay the M Corporation $500,000 a year. The $500,000 received by the M Corporation from the O Corporation constitutes personal holding company income.

Example (2): The N Corporation, the entire outstanding capital stock of which is owned by four individuals, is engaged

in engineering. The N Corporation entered into a contract with the O Corporation to perform engineering services for the O Corporation, in consideration of which the O Corporation was to pay the N Corporation $50,000. The individual who was to perform the services was not designated (by name or by description) in the contract and no one but the N Corporation had the right to designate (by name or by description) such individual. The $50,000 received by the N Corporation from the O Corporation does not constitute personal holding company income.

(9) *Compensation for use of property.*—The compensation for the use of, or the right to use, property of the corporation which is to be included in personal holding company income consists of amounts received as compensation (however designated and from whomsoever received) for the use of, or the right to use, property of the corporation in any case in which, at any time during the taxable year, 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for an individual entitled to the use of the property, whether such right is obtained directly from the corporation or by means of a sublease or other arrangement. The property may consist of a yacht, a city residence, a country house, or any other kind of property. See section 404 and articles 404 (a)–1 to 404 (a)–7, article 404 (b)–1 and the last paragraph of article 402–3.

(10) *Rents (including interest constituting rent).*—The rents which are to be included in personal holding company income consist of compensation, however designated, including charter fees, etc., for the use of, or the right to use, real property, or any other kind of property and the interest on debts owed to the corporation, to the extent such debts represent the price for which real property held primarily for sale to customers in the ordinary course of its trade or business was sold or exchanged by the corporation, but do not include amounts constituting personal holding company income under section 403 (f) and paragraph (9) of this article. However, rents do not constitute personal holding company income if constituting 50 percent or more of the gross income of the corporation.

(11) *Mineral, oil, or gas royalties.*—The income from mineral, oil, or gas royalties is to be included as personal holding company income, unless (A) the aggregate amount of such royalties constitutes 50 percent or more of the gross income of the corporation for the taxable year and (B) the aggregate amount of deductions allowable for expenses under section 23 (a) (other than compensation for personal services rendered by the shareholders of the corporation) equals 15 percent or more of the gross income of the corporation for the taxable year.

The term "mineral, oil, or gas royalties" means all royalties, except overriding royalties, received from any interest in mineral, oil, or gas properties. The term "mineral" includes the ores specified in paragraph (*d*) of article 23 (m)–1. As used in this paragraph the term "overriding royalties" means amounts received from the sublessee by the operating company which originally leased and developed the natural resource property in respect of which such overriding royalties are paid.

SEC. 404. *Stock ownership.*—(a) *Constructive ownership.*—For the purpose of determining whether a corporation is a personal holding company, insofar as such determination is based on stock ownership under section 402 (a) (2), section 403 (e), or section 403 (f)—

(1) *Stock not owned by individual.*—Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

(2) *Family and partnership ownership.*—An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For the purposes of this paragraph the the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(3) *Options.*—If any person has an option to acquire stock such stock shall be considered as owned by such person. For the purposes of this paragraph an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(4) *Application of family-partnership and option rules.*—Paragraphs (2) and (3) shall be applied—

(A) For the purposes of the stock ownership requirement provided in section 402 (a) (2), if, but only if, the effect is to make the corporation a personal holding company;

(B) For the purposes of section 403 (e) (relating to personal service contracts), or of section 403 (f) (relating to the use of property by shareholders), if, but only if, the effect is to make the amounts therein referred to includible under such subsection as personal holding company income.

(5) *Constructive ownership as actual ownership.*—Stock constructively owned by a person by reason of the application of paragraph (1) or (3) shall, for the purpose of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for the purpose of again applying such paragraph in order to make another the constructive owner of such stock.

(6) *Option rule in lieu of family and partnership rule.*—If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

ART. 404 (a)–1. *Stock ownership.*—For the purpose of determining whether—

(*a*) a corporation is a personal holding company, in so far as such determination is based on the stock ownership requirement specified in section 402 (a) (2) and article 402–3, or

(*b*) amounts received under a personal service contract or from the sale of such a contract constitute personal holding company income in so far as such determination is based on the stock ownership requirement specified in section 403 (e) and paragraph (8) of article 403–1, or

(*c*) compensation for the use of property constitutes personal holding company income in so far as such determination is based on the stock ownership requirement specified in section 403 (f) and paragraph (9) of article 403–1,

stock owned by an individual includes stock constructively owned by him as provided in section 404. For such purpose constructive ownership of stock shall be determined and applied in accordance with the rules provided in section 404 and articles 404 (a)–2 to 404 (a)–7 and article 404 (b)–1. All forms and classes of stock, however denominated, which represent the interests of shareholders, members, or beneficiaries in the corporation shall be taken into consideration.

ART. 404 (a)–2. *Stock not owned by individual.*—In determining the ownership of stock for any of the purposes set forth in article 404 (a)–1, stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries. For example, if A and B, two individuals, are the exclusive and equal beneficiaries of a trust or estate, and if such trust or estate owns the entire capital stock of the M Corporation, and if the M Corporation in turn owns the entire capital stock of the N Corporation, then the stock of both the M Corporation and the N Corporation shall be considered as being owned equally by A and B as the individuals owning the beneficial interest therein. See also article 404 (a)–6.

ART. 404 (a)–3. *Family and partnership ownership.*—In determining the ownership of stock for any of the purposes set forth in article 404 (a)–1, an individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For the purposes of such determination the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

The application of the family and partnership rule in determining the ownership of stock for the purpose set forth in (*a*) of article 404 (a)–1 is illustrated by the following example:

Example: The M Corporation at some time during the last half of the taxable year had 1,800 shares of outstanding stock, 450 of which were held by various individuals having no relationship to one another and none of whom were partners, and the remaining 1,350 were held by 51 shareholders as follows:

Relationships	Shares		Shares		Shares		Shares		Shares	
An individual	A	100	B	20	C	20	D	20	E	20
His father	AF	10	BF	10	CF	10	DF	10	EF	10
His wife	AW	10	BW	40	CW	40	DW	40	EW	40
His brother	AB	10	BB	10	CB	10	DB	10	EB	10
His son	AS	10	BS	40	CS	40	DS	40	ES	40
His daughter by former marriage (son's half-sister)	ASHS	10	BSHS	40	CSHS	40	DSHS	40	ESHS	40
His brother's wife	ABW	10	BBW	10	CBW	10	DBW	160	EBW	10
His wife's father	AWF	10	BWF	10	CWF	110	DWF	10	EWF	10
His wife's brother	AWB	10	BWB	10	CWB	10	DWB	10	EWB	10
His wife's brother's wife	AWBW	10	BWBW	10	CWBW	10	DWBW	10	EWBW	110
Individual's partner	AP	10								

By applying the statutory rule provided in section 404 (a) (2) five individuals own more than 50 percent of the outstanding stock as follows:

A (including AF, AW, AB, AS, ASHS, AP)	160
B (including BF, BW, BB, BS, BSHS)	160
CW (including C, CS, CWF, CWB)	220
DB (including D, DF, DBW)	200
EWB (including EW, EWF, EWBW)	170
Total, or more than 50 percent	910

Individual A represents the obvious case where the head of the family owns the bulk of the family stock and naturally is the head of the group. A's partner owns 10 shares of the stock. Individual B represents the case where he is still head of the group because of the ownership of stock by his immediate family. Individuals C and D represent cases where the individuals fall in groups headed in C's case by his wife and in D's case by his brother because of the preponderance of holdings on the part of relatives by marriage. Individual E represents the case where the preponderant holdings of others eliminate that individual from the group.

The method of applying the family and partnership rule as illustrated in the foregoing example also applies in determining the ownership of stock for the purposes stated in (*b*) and (*c*) of article 404 (a)–1.

ART. 404 (a)–4. *Options.*—In determining the ownership of stock for any of the purposes set forth in article 404 (a)–1, if any person has an option to acquire stock, such stock may be considered as owned by such person. The term "option" as used in this article includes an option to acquire such an option and each one of a series of such options, so that the person who has an option on an option to acquire stock may be considered as the owner of the stock.

ART. 404 (a)–5. *Application of family-partnership and option rules.*—The family and partnership rule provided in section 404 (a) (2) and article 404 (a)–3 and the option rule provided in section 404 (a) (3) and article 404 (a)–4 shall be applied—

(*a*) for the purpose stated in (*a*) of article 404 (a)–1, if, but only if, the effect of such application is to make the corporation a personal holding company, or

(*b*) for the purpose stated in (*b*) of article 404 (a)–1, if, but only if, the effect of such application is to make the amounts received under a personal service contract or from the sale of such a contract personal holding company income, or

(*c*) for the purpose stated in (*c*) of article 404 (a)–1, if, but only if, the effect of such application is to make the compensation for the use of property personal holding company income.

The family and partnership rule and the option rule must be applied independently for each of the purposes stated in article 404 (a)–1.

ART. 404 (a)–6. *Constructive ownership as actual ownership.*—In determining the ownership of stock for any of the purposes set forth in article 404 (a)–1—

(*a*) stock constructively owned by a person by reason of the application of the rule provided in section 404 (a) (1), relating to stock not owned by an individual (see article 404 (a)–2) shall be considered as actually owned by such person for the purpose of again applying such rule or of applying the family and partnership rule provided in section 404 (a) (2) (see article 404 (a)–3) in order to make another person the constructive owner of such stock, and

(*b*) stock constructively owned by a person by reason of the application of the option rule provided in section 404 (a) (3) (see article 404 (a)–4) shall be considered as actually owned by such person for the purpose of applying either the rule provided in section 404 (a) (1), relating to stock not owned by an individual, or the family and partnership rule provided in section 404 (a) (2) in order to make another person the constructive owner of such stock, but

(*c*) stock constructively owned by an individual by reason of the application of the family and partnership rule provided in section 404 (a) (2) shall not be considered as actually owned by such individual for the purpose of again applying such rule in order to make another individual the constructive owner of such stock.

The application of this article may be illustrated by the following examples:

Example (1): A's wife, AW, owns all of the stock of the M Corporation, which in turn owns all the stock of the O Corporation. The O Corporation in turn owns all the stock of the P Corporation.

Under the rule provided in section 404 (a) (1), relating to stock not owned by an individual, the stock in the P Corporation owned by the O Corporation is considered to be owned constructively by the M Corporation, the sole shareholder of the O Corporation. Such constructive ownership of the stock of the M Corporation is considered as actual ownership for the purpose of again applying such rule in order to make AW, the sole shareholder of the M Corporation, the constructive owner of the stock of the P Corporation. Similarly, the constructive ownership of the stock by AW is considered as actual ownership for the purpose of applying the family and partnership rule provided in section 404 (a) (2) in order to make A the constructive owner of the stock of the P Corporation, if such application is necessary for any of the purposes set forth in article 404 (a)–1. But the stock thus constructively owned by A may not be considered as actual ownership for the purpose of again applying the family and partnership rule in order to make another member of A's family, for example, A's father, the constructive owner of the stock of the P Corporation.

Example (2): B, an individual, owns all the stock of the R Corporation which has an option to acquire all the stock of the S Corporation, owned by C, an individual, who is not related to B.

Under the option rule provided in section 404 (a) (3) the R Corporation may be considered as owning constructively the stock of the S Corporation owned by C. Such constructive ownership of the stock by the R Corporation is considered as actual ownership for the purpose of applying the rule provided in section 404 (a) (1), relating to stock not owned by an individual, in order to make B, the sole shareholder of the R Corporation, the constructive owner of the stock of the S Corporation. The stock thus constructively owned by B by reason of the application of the rule provided in section 404 (a) (1) likewise is considered as actual ownership for the purpose, if necessary, of applying the family and partnership rule provided in section 404 (a) (2), in order to make another member of B's family, for example, B's wife, BW, the constructive owner of the stock of the S Corporation. However, the family and partnership rule could not again be applied so as to make still another individual the constructive owner of the stock of the S Corporation, that is, the stock constructively owned by BW could not be considered as actually owned by her in order to make BW's father the constructive owner of such stock by a second application of the family and partnership rule.

ART. 404 (a)–7. *Option rule in lieu of family and partnership rule.*—If, in determining the ownership of stock for any of the purposes set forth in article 404 (a)–1 stock may be considered as constructively owned by an individual by an application of both the family-partnership rule provided in section 404 (a)

(2) (see article 404 (a)–3) and the option rule provided in section 404 (a) (3) (see article 404 (a)–4) such stock shall be considered as owned constructively by the individual by reason of the application of the option rule.

The application of this article may be illustrated by the following example:

Example: Two brothers, A and B, each own 10 percent of the stock of the M Corporation, and A's wife, AW, also owns 10 percent of the stock of such corporation. AW's husband, A, has an option to acquire the stock owned by her at any time. It becomes necessary, for one of the purposes stated in article 404 (a)–1, to determine the stock ownership of B in the M Corporation.

If the family and partnership rule were the only rule that applied in the case, B would be considered, under that rule, as owning 20 percent of the stock of the M Corporation, namely, his own stock plus the stock owned by his brother. In that event, B could not be considered as owning the stock held by AW since (1) AW is not a member of B's family and (2) the constructive ownership of such stock by A through the application of the family and partnership rule in his case is not considered as actual ownership so as to make B the constructive owner by a second application of the same rule with respect to the ownership of the stock. (See article 404 (a)–6.)

However, there is more than the family and partnership rule involved in this example. As the holder of an option upon the stock, A may be considered the constructive owner of his wife's stock by the application of the option rule and without reference to the family relationship between A and AW. If A is considered as owning the stock of his wife by application of the option rule, then under article 404 (a)–6, such constructive ownership by A is regarded as actual ownership for the purpose of applying the family and partnership rule so as to make another member of A's family, for example B, the constructive owner of the stock. Hence, since A may be considered as owning his wife's stock by applying both the family-partnership rule and the option rule, the provisions of section 404 (a) (6) apply and accordingly A must be considered the constructive owner of his wife's stock under the option rule rather than the family-partnership rule. B thus becomes the constructive owner of 30 percent of the stock of the M Corporation, namely, his own 10 percent, A's 10 percent, and AW's 10 percent constructively owned by A as the holder of an option on the stock.

[SEC. 404. *Stock ownership.*]

(b) *Convertible securities.*—Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock—

(1) For the purpose of the stock ownership requirement provided in section 402 (a) (2), but only if the effect of the inclusion of all such securities is to make the corporation a personal holding company;

(2) For the purpose of section 403 (e) (relating to personal service contracts), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such subsection as personal holding company income; and

(3) For the purpose of section 403 (f) (relating to the use of property by shareholders), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such subsection as personal holding company income.

The requirement in paragraphs (1), (2), and (3) that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included.

ART. 404 (b)–1. *Convertible securities.*—Under section 404 (b), outstanding securities of a corporation, such as bonds, debentures, or other corporate obligations, convertible into stock of the corporation (whether or not convertible during the taxable year) shall be considered as outstanding stock of the corporation for the purpose of the stock ownership requirement provided in section 402 (a) (2), but only if the effect of such consideration is to make the corporation a personal holding company. Such convertible securities shall be considered as outstanding stock for the purpose of section 403 (e), relating to amounts received under personal service contracts, or of section 403 (f), relating to compensation for the use of property, but only if the effect of such consideration is to make the amounts therein referred to includible under such sections as personal holding company income. The consideration of convertible securities as outstanding stock is subject to the exception that, if some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be considered as outstanding stock although the others are not so considered, but no convertible securities shall be considered as outstanding stock unless all outstanding securities having a prior conversion date are also so considered. For example, if outstanding securities are convertible in 1938, 1939, and 1940, those convertible in 1938 can be properly considered as outstanding stock without so considering those convertible in 1939 or 1940, and those convertible in 1938 and 1939 can be properly considered as outstanding stock without so considering those convertible in 1940. However, the securities convertible in 1939 could not be properly considered as outstanding stock without so considering those convertible in 1938 and the securities convertible in 1940 could not be properly considered as outstanding stock without so considering those convertible in 1938 and 1939.

SEC. 405. *Undistributed title IA net income.*—For the purposes of this title, the term "undistributed Title IA net income" means the Title IA net income (as defined in section 406) minus—

(a) The amount of the dividends paid credit provided in section 27 (a) without the benefit of paragraphs (3) and (4) thereof (computed without its reduction, under section 27 (b) (1), by the amount of the credit provided in section 26 (a), relating to interest on certain obligations of the United States and Government corporations); but, in the computation of the dividends paid credit for the purposes of this title, the amount allowed under subsection (c) of this section in the computation of the tax under this title for any preceding taxable year shall be considered as a dividend paid in such preceding taxable year and not in the year of distribution;

(b) Amounts used or irrevocably set aside to pay or to retire indebtedness of any kind incurred prior to January 1, 1934, if such amounts are reasonable with reference to the size and terms of such indebtedness;

(c) Dividends paid after the close of the taxable year and before the 15th day of the third month following the close of the taxable year, if claimed under this subsection in the return, but only to the extent to which such dividends are includible, for the purposes of Title I, in the computation of the basic surtax credit for the year of distribution; but the amount allowed under this subsection shall not exceed either:

(1) The accumulated earnings and profits as of the close of the taxable year; or

(2) The undistributed Title IA net income for the taxable year computed without regard to this subsection; or

(3) 10 per centum of the sum of—

(A) The dividends paid during the taxable year (reduced by the amount allowed under this subsection in the computation of the tax under this title for the taxable year preceding the taxable year); and

(B) The consent dividends credit for the taxable year.

ART. 405–1. *Undistributed Title IA net income.*—The term "undistributed Title IA net income" means the Title IA net income (as defined in section 406 and article 406–1) minus (A) the amount of the dividends paid credit provided in section 27 (a) without the benefit of paragraphs (3), relating to the deficit credit, and (4) relating to the debt credit, thereof (computed without its reduction, under section 27 (b) (1), by the amount of the credit provided in section 26 (a), relating to interest on certain obligations of the United States and government corporations), (B) amounts used or irrevocably set aside to pay or to retire indebtedness of any kind incurred prior to January 1, 1934, if such amounts are reasonable with reference to the size and the terms of such indebtedness (see article 405–2) and (C) dividends paid after the close of the taxable year and before the fifteenth day of the third month thereafter, if claimed under subsection (c) of section 405 in the return, but only to the extent and subject to the limitations contained in that subsection. In computing the dividends paid credit for the purposes of Title IA, the amount allowed under subsection (c) in the computation of the tax under Title IA for any preceding taxable year is considered a dividend paid in such preceding taxable year and not in the year of distribution.

ART. 405–2. *Amounts used or irrevocably set aside to pay or to retire indebtedness of any kind incurred prior to January 1, 1934*—(*a*) *Indebtedness.*—The term "indebtedness" means an obligation, absolute and not contingent, to pay, on demand or within a given time, in cash or other medium, a fixed amount. The term "indebtedness" does not include the obligation of a corporation on its capital stock.

The indebtedness must have been incurred (or, if incurred by assumption, assumed) by the taxpayer prior to January 1, 1934. An indebtedness evidenced by bonds, notes or other obligations issued by a corporation is ordinarily incurred as of the date such obligations are issued and the amount of such indebtedness is the amount represented by the face value of the obligations. In the case of renewal or other changes in the form of an indebtedness, so long as the relationship of debtor and creditor continues between the taxpayer and his creditor, the giving of a new promise to pay by the taxpayer will not have the effect of changing the date the indebtedness was incurred.

(*b*) *Amounts used or irrevocably set aside.*—The deduction is allowable, in any taxable year, only for amounts used or *irrevocably* set aside in that year. The use or irrevocable setting aside must be to effect the extinguishment or discharge of indebtedness. Since, therefore, in the case of renewal and other changes in the form of an indebtedness, the relationship of debtor and creditor continues between the taxpayer and his creditor, the mere giving of a new promise to pay by the taxpayer will not result in an allowable deduction. If amounts are set aside in one year, no deduction is allowable for such amounts for a later year in which actually paid. As long as all other conditions are satisfied, the aggregate amount allowable as a deduction for any taxable year includes all amounts (from whatever source) used and, as well, all amounts (from whatever source) *irrevocably* set aside, irrespective of whether in cash or other medium. Double deductions were not permitted.

(*c*) *Reasonableness of the amounts with reference to the size and terms of the indebtedness.*—The reasonableness of the amounts used or *irrevocably* set aside must be determined by reference to the size and terms of the particular indebtedness. Hence, all the facts and circumstances with respect to the nature, scope, conditions, amount, maturity, and other terms of the particular indebtedness must be shown in each case.

Ordinarily an amount used to pay or retire an indebtedness, in whole or in part, at or prior to the maturity and in accordance with the terms thereof will be considered reasonable, and may be allowable as a deduction for the year in which so used, if no adjustment is required by reason of an amount set aside in a prior year for payment or retirement of the same indebtedness.

All amounts *irrevocably* set aside for the payment or retirement of an indebtedness in accordance with and pursuant to the terms of the obligation, for example, the annual contribution *to trustees* required by the provisions of a mandatory sinking fund agreement, will be considered as complying with the statutory requirement of reasonableness. To be considered reasonable it is not necessary that the plan of retirement provide for a retroactive setting aside of amounts for years prior to that in which the plan is adopted. However, if a voluntary plan was adopted prior to 1934, no adjustment is allowable in respect of the amounts set aside in the years prior to 1934.

(*d*) *General.*—The burden of proof will rest upon the taxpayer to sustain the deduction claimed. Therefore, the taxpayer must furnish the information required by the return, and such other information as the Commissioner may require in substantiation of the deduction claimed.

SEC. 406. *Title IA net income.*—For the purposes of this title the term "Title IA net income" means the net income with the following adjustments:

(*a*) *Additional deductions.*—There shall be allowed as deductions—

(1) Federal income, war-profits, and excess-profits taxes paid or accrued during the taxable year to the extent not allowed as a deduction under section 23; but not including the tax imposed by section 102, section 401, or a section of a prior income-tax law corresponding to either of such sections.

(2) In lieu of the deduction allowed by section 23 (q), contributions or gifts payment of which is made within the taxable year to or for the use of donees described in section 23 (q) for the purposes therein specified, to an amount which does not exceed 15 per centum of the taxpayer's net income, computed without the benefit of this paragraph and section 23 (q), and without the deduction of the amount disallowed under subsection (b) of this section.

(3) In the case of a corporation organized prior to January 1, 1936, to take over the assets and liabilities of the estate of a decedent, amounts paid in liquidation of any liability of the corporation based on the liability of the decedent to make contributions or gifts to or for the use of donees described in section 23 (o) for the purposes therein specified, to the extent such liability of the decedent existed prior to January 1, 1934. No deduction shall be allowed under paragraph (2) of this subsection for a taxable year for which a deduction is allowed under this paragraph.

(*b*) *Deductions not allowed.*—The aggregate of the deductions allowed under section 23 (a), relating to expenses, and section 23 (l), relating to depreciation, which are allocable to the operation and maintenance of property owned or operated by the corporation, shall be allowed only in an amount equal to the rent or other compensation received for the use of, or the right to use, the property, unless it is established (under regulations prescribed by the Commissioner with the approval of the Secretary) to the satisfaction of the Commissioner:

(1) That the rent or other compensation received was the highest obtainable, or, if none was received, that none was obtainable;

(2) That the property was held in the course of a business carried on bona fide for profit; and

(3) Either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business.

ART. 406–1. *Title IA net income.*—The term "Title IA net income" means, in the case of a domestic corporation, the gross income as defined in section 22 less the deductions provided in section 23 subject to the qualifications, limitations, and exceptions provided in section 406. In the case of a foreign corporation, whether resident or nonresident, which files or causes a return to be filed, the "Title IA net income" means the net income from sources within the United States (gross income from sources within the United States as defined in section 119 and the regulations thereunder less statutory deductions) subject to the qualifications, limitations and exceptions provided in section 406. In the case of a foreign corporation, whether resident or nonresident, which files no return the "Title IA net income" means the gross income from sources within the United States as defined in section 119 and the regulations thereunder less the deductions enumerated in section 406 (a) but without the benefit of any deductions under Title I (see section 233).

The "Title IA net income" includes interest upon obligations of the United States and obligations of a corporation organized under Act of Congress, if such corporation is an instrumentality of the United States, except as provided in section 22 (b) (4). The "Title IA net income" does not include interest on obligations of States or Territories of the United States or any political subdivision thereof or of the District of Columbia or of the possessions of the United States.

The foreign tax credit permitted by section 131 with respect to the taxes imposed by Title I is not allowed with respect to the surtax imposed by section 401. However, the deduction of foreign taxes under section 23 (c) is permitted for the purposes of the surtax even if for the purposes of the corporate tax imposed by Title I a credit for such taxes is taken.

In addition to the qualifications, limitations, and exceptions provided in section 406 (a), under section 406 (b) the aggregate of the deductions allowed under section 23 (a), relating to expenses, and section 23 (l), relating to depreciation, which are allocable to the operation and maintenance of property owned or operated by the company shall be allowed only in an amount equal to the rent or other compensation received for the use of, or the right to use, the property, unless it is established to the satisfaction of the Commissioner:

(1) That the rent or other compensation received was the highest obtainable, or if none was received, that none was obtainable;

(2) That the property was held in the course of a business carried on bona fide for profit; and

(3) Either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business.

The burden of proof will rest upon the taxpayer to sustain the deduction claimed. If, in computing its Title IA net income, a personal holding company claims deductions for expenses and depreciation allocable to the operation and maintenance of property owned or operated by the company, in an aggregate amount in excess of the rent or other compensation received for the use of, or the right to use, the property, it shall attach to its income tax return a statement setting forth its claim for allowance of the additional deductions together with a complete statement of the facts and circumstances pertinent to its claim and the arguments on which it relies. Such statement shall set forth:

(*a*) A description of the property;

(*b*) The cost or other basis to the corporation and the nature and value of the consideration paid for the property;

(*c*) The name and address of the person from whom acquired and the date thereof;

(*d*) The name and address of the person to whom leased or rented, or the person permitted to use the property, and the number of shares of stock, if any, held by such person and the members of his family;

(*e*) The nature and gross amount of the rent or other compensation received for the use of, or the right to use, the property during the taxable year and for each of the five preceding years and the amount of the expenses incurred with respect to, and the depreciation sustained on, the property for such years;

(*f*) Evidence that the rent or other compensation was the highest obtainable and, if none was received, a statement of the reasons therefor;

(*g*) A copy of the contract, lease or rental agreement;

(*h*) The purpose for which the property was used;

(*i*) The business carried on by the corporation with respect to which the property was held and the gross income, expenses and net income derived from the conduct of such business for the taxable year and for each of the five preceding years;

(*j*) A statement of any reasons which existed for expectation that the operation of the property would be profitable, or a statement of the necessity for the use of the property in the business of the corporation, and the reasons why the property was acquired; and

(*k*) Any other information pertinent to the taxpayer's claim.

ART. 406–2. *Illustration of computation of Title IA net income, undistributed Title IA net income, and surtax.*—The method of computation of the Title IA net income, the undistributed Title IA net income, and the surtax under Title IA may be illustrated as follows:

The following facts exist with respect to the O Corporation, a personal holding company which is on the cash receipts and disbursements basis, for the calendar year 1938:

The net income, as computed under Title I, amounts to $190,000.

Federal income tax for the year 1937 paid March 15, 1938, aggregates $17,500. This amount includes the surtax under section 14 of the Revenue Act of 1936 but does not include excess-profits tax imposed by section 106 of the Revenue Act of 1935, surtax imposed by section 102 of the Revenue Act of 1936, or section 351 of the latter Act as amended by the Revenue Act of 1937, or a section of a prior income-tax law corresponding to either of such sections 102 or 351.

Contributions or gifts payment of which is made to or for the use of donees described in section 23 (q) for the purposes therein specified amount to $35,000, of which $10,000 is deducted in arriving at the net income under Title I.

Rent in the amount of $10,000 was received from the principal shareholder of the corporation for the use of a country estate which had been previously acquired from such shareholder in exchange for its capital stock. The expenses of the corporation allocable to the maintenance and operation of the country estate amount to $30,000. The yearly depreciation on the depreciable property of the estate amounts to $5,000. The corporation has not established its right to claim the entire amount of the expenses and depreciation applicable to the estate as provided in section 406 (b) and article 406–1.

Dividends paid by the corporation to its shareholders during the taxable year which are allowable as a credit under section 27 (a) amount to $125,000.

The amount used during the year to pay indebtedness incurred by the corporation prior to January 1, 1934, is $31,750.

On March 1, 1939, the corporation paid its shareholders a taxable dividend of $15,000 and in its return, on Form 1120H, claimed a deduction for that amount under section 405 (c). Its accumulated earnings and profits as of the close of the taxable year 1938 were more than $15,000.

The Title IA net income, the undistributed Title IA net income, and the surtax are computed as follows:

Net income under Title I		$190,000
Add:		
Contributions deductible in computing net income under section 21		10,000
Aggregate of expenses and depreciation relating to the country estate in excess of the income derived therefrom		25,000
Net income computed without the benefit of a deduction for contributions and without the benefit of the amount disallowed under section 406 (b)		225,000
Less:		
Federal income taxes	$17,500	
Contributions deductible under section 406 (a) (2) (15 percent of $225,000)	33,750	
		$51,250
Title IA net income		173,750
Less:		
Dividends paid credit	$125,000	
Amount used to pay indebtedness	31,750	
		156,750
Undistributed Title IA net income (before applying section 405 (c))		17,000
Dividends paid March 1, 1939 (subject to limitation in section 405 (c) (3))		12,500
Undistributed Title IA net income		4,500
Amount taxable at 65 percent (not in excess of $2,000)		2,000
Amount taxable at 75 percent ($4,500 minus $2,000)		2,500
Surtax on $2,000 at 65 percent		1,300
Surtax on $2,500 at 75 percent		1,875
Total surtax		3,175

SEC. 407. *Deficiency dividends—Credits and refunds.*—(*a*) *Credit against unpaid deficiency.*—If the amount of a deficiency with respect to the tax imposed by this title for any taxable year has been established—

(1) by a decision of the Board of Tax Appeals which has become final; or

(2) by a closing agreement made under section 606 of the Revenue Act of 1928, as amended; or

(3) by a final judgment in a suit to which the United States is a party;

then a deficiency dividend credit shall be allowed against the amount of the deficiency so established and all interest, additional amounts, and additions to the tax provided by law not paid on or before the date when claim for a deficiency dividend credit is filed under subsection (d). The amount of such credit shall be 65 per centum of the amount of deficiency dividends, as defined in subsection (c), not in excess of $2,000, plus 75 per centum of the amount of such dividends in excess of $2,000; but such credit shall not exceed the portion of the deficiency so established which is not paid on or before the date of the closing agreement, or the date the decision of the Board or the judgment becomes final, as the case may be. Such credit shall be allowed as of the date the claim for deficiency dividend credit is filed.

(*b*) *Credit or refund of deficiency paid.*—When the Commissioner has determined that there is a deficiency with respect to the tax imposed by this title and the corporation has paid any portion of such asserted deficiency and it has been established—

(1) by a decision of the Board of Tax Appeals which has become final; or

(2) by a closing agreement made under section 606 of the Revenue Act of 1928, as amended; or

(3) by a final judgment in a suit against the United States for refund—

(A) if such suit is brought within six months after the corporation became entitled to bring suit, and

(B) if claim for refund was filed within six months after the payment of such amount;

that any portion of the amount so paid was the whole or a part of a deficiency at the time when paid, then there shall be credited or refunded to the corporation an amount equal to 65 per centum of the amount of deficiency dividends not in excess of $2,000, plus 75 per centum of the amount of such dividends in excess of $2,000, but such credit or refund shall not exceed the portion so paid by the corporation. Such credit or refund shall be made as provided in section

322 but without regard to subsection (b) or subsection (c) thereof. No interest shall be allowed on such credit or refund. No credit or refund shall be made under this subsection with respect to any amount of tax paid after the date of the closing agreement, or the date the decision of the Board or the judgment becomes final, as the case may be.

(c) *Deficiency dividends.*—(1) *Definition.*—For the purpose of this title, the term "deficiency dividends" means the amount of the dividends paid, on or after the date of the closing agreement or on or after the date the decision of the Board or the judgment becomes final, as the case may be, and prior to filing claim under subsection (d), which are includible, for the purposes of Title I, in the computation of the basic surtax credit for the year of distribution. No dividends shall be considered as deficiency dividends for the purposes of allowance of credit under subsection (a) unless (under regulations prescribed by the Commissioner with the approval of the Secretary) the corporation files, within thirty days after the date of the closing agreement, or the date upon which the decision of the Board or judgment becomes final, as the case may be, notification (which specifies the amount of the credit intended to be claimed) of its intention to have the dividends so considered.

(2) *Effect on dividends paid credit.*—(A) *For taxable year in which paid.*—Deficiency dividends paid in any taxable year (to the extent of the portion thereof with respect to which the credit under subsection (a), or the credit or refund under subsection (b), or both, are allowed) shall be subtracted from the basic surtax credit for such year, but only for the purpose of computing the tax under this title for such year and succeeding years.

(B) *For prior taxable year.*—Deficiency dividends paid in any taxable year (to the extent of the portion thereof with respect to which the credit under subsection (a), or the credit or refund under subsection (b), or both, are allowed) shall not be allowed under section 405 (c) in the computation of the tax under this title for any taxable year preceding the taxable year in which paid.

(d) *Claim required.*—No deficiency dividends credit shall be allowed under subsection (a) and no credit or refund shall be made under subsection (b) unless (under regulations prescribed by the Commissioner with the approval of the Secretary) claim therefor is filed within sixty days after the date of the closing agreement, or the date upon which the decision of the Board or judgment becomes final, as the case may be.

(e) *Suspension of statute of limitations and stay of collection.*—(1) *Suspension of running of statute.*—If the corporation files a notification, as provided in subsection (c), to have dividends considered as deficiency dividends, the running of the statute of limitations provided in section 275 or 276 on the making of assessments and the bringing of distraint or a proceeding in court for collection, in respect of the deficiency and all interest, additional amounts, and additions to the tax provided by law, shall be suspended for a period of two years after the date of the filing of such notification.

(2) *Stay of collection.*—In the case of any deficiency with respect to the tax imposed by this title established as provided in subsection (a)—

(A) The collection of the deficiency and all interest, additional amounts, and additions to the tax provided for by law shall, except in cases of jeopardy, be stayed until the expiration of thirty days after the date of the closing agreement, or the date upon which the decision of the Board or judgment becomes final, as the case may be.

(B) If notification has been filed as provided in subsection (c) the collection of such part of the deficiency as is not in excess of either the credit allowable under subsection (a) or the amount which in the notification is specified as intended to be claimed as credit shall, except in cases of jeopardy, be stayed until the expiration of sixty days after the date of the closing agreement, or the date upon which the decision of the Board or judgment becomes final, as the case may be.

(C) If claim for deficiency dividend credit is filed under subsection (d), the collection of such part of the deficiency as is not in excess of either the credit allowable under subsection (a) or the amount claimed, shall be stayed until the date the claim for credit is disallowed (in whole or in part), and if disallowed in part collection shall be made only of the part disallowed.

No distraint or proceeding in court shall be begun for the collection of an amount the collection of which is stayed under subparagraph (A), (B), or (C), during the period for which the collection of such amount is stayed.

(f) *Credit or refund denied if fraud, etc.*—No deficiency dividend credit shall be allowed under subsection (a) and no credit or refund shall be made under subsection (b) if the closing agreement, decision of the Board, or judgment contains a finding that any part of the deficiency is due to fraud with intent to evade tax, or to failure to file the return under this title within the time prescribed by law or prescribed by the Commissioner in pursuance of law, unless it is shown that such failure to file is due to reasonable cause and not due to willful neglect.

ART. 407–1. *Purpose and scope of deficiency dividend credit.*—Section 407 provides a method under which, by virtue of dividend distributions, a corporation may, under certain conditions (see article 407–3), be relieved from the payment of a deficiency in the surtax imposed by Title IA with respect to any taxable year beginning after December 31, 1937, or, if any portion of such deficiency has been paid, may be entitled, under certain conditions (see article 407–4), to a credit or refund of such portion. The deficiency must be established in the manner specified in section 407 (a) (1), (2), or (3) or section 407 (b) (1), (2), or (3) and the dividends must be paid on the date so established or within 60 days thereafter. For what constitutes payment of a dividend, see article 27 (b)–2.

The benefit of section 407 is not extended to the satisfaction of any interest, additional amounts, or additions to the tax provided by law with respect to the deficiency and such amounts remain payable as if that section had not been enacted. The benefit is denied to any deficiency attributable, in whole or in part, to fraud with intent to evade the tax, or to a failure to file a timely return without reasonable cause for such failure. See section 407 (f).

ART. 407–2. *Date when decision by Board or court becomes final.*—The date upon which a decision by the Board of Tax Appeals becomes final is prescribed in section 1005 of the Revenue Act of 1926, as amended. See paragraph 16 of the Appendix to these regulations.

The date upon which a judgment of a court becomes final must be determined upon the basis of the facts in the particular case. Ordinarily, a judgment of a United States district court becomes final upon the expiration of the time allowed for taking an appeal, if no such appeal is duly taken, within such time; and a judgment of the United States Court of Claims becomes final upon the expiration of the time allowed for filing a petition for certiorari if no such petition is duly filed within such time.

ART. 407–3. *Credit against unpaid deficiency*—(a) *General.*—If the amount of a deficiency with respect to the tax imposed by Title IA for any taxable year beginning after December 31, 1937, has been established as provided in section 407 (a) (1), (2), or (3), the corporation, under certain circumstances, is entitled to a deficiency dividends credit which, though it may not exceed the amount of the deficiency, is to be applied against the amount of such deficiency and all interest, additional amounts, and additions to the tax provided by law not paid on or before the date when the claim for a deficiency dividends credit is filed under section 407 (d). The amount of the deficiency dividends credit is 65 percent of the amount of "deficiency dividends" (as defined in section 407 (c)) not in excess of $2,000 plus 75 percent of the amount of such dividends in excess of $2,000, and the allowance of the credit is subject to the following conditions, qualifications and limitations:

(1) The corporation is required under section 407 (c), within 30 days after the date of the closing agreement or the date upon which the decision of the Board or the judgment becomes final, to file a notice of its intention to claim a deficiency dividends credit, which notice shall specify the amount of the credit intended to be claimed;

(2) The corporation is required under section 407 (d), within 60 days after the date of the closing agreement or the date upon which the decision of the Board or judgment becomes final, to file a claim with respect to the credit for deficiency dividends;

(3) The deficiency dividends are required under section 407 (c) to be paid prior to the filing of the claim for a deficiency dividends credit and such dividends must be of such a nature as to constitute taxable dividends in the hands of such of the shareholders as are subject to taxation under Title I for the year in which paid (see section 27 (i), and must be nonpreferential (see section 27 (h)); and

(4) Under section 407 (a) the deficiency dividends credit shall not exceed the portion of the deficiency (not counting the interest, additional amounts, and additions to the tax, provided by law) which is not paid on or before the date of the closing agreement, or the date the decision of the Board or the judgment becomes final, as the case may be.

(b) *Form of notification.*—The notice of intention to have dividends considered as deficiency dividends for the purposes of the allowance of credit under section

407 (a) shall be made, under oath or affirmation, on Form 975, copies of which, upon request, may be procured from any collector.

(c) *Contents of notification.*—The notification shall, in accordance with the provisions of this article and the instructions on the form, set forth the following information:

(1) The name and address of the corporation;

(2) The place and date of incorporation;

(3) The amount of the unpaid deficiency with respect to the tax imposed by Title IA; how it was established (closing agreement, Board decision or court judgment); the date thereof and the taxable year or years involved;

(4) The amount of the credit intended to be claimed as a deficiency dividends credit; and

(5) Such other information as may be required by the notification form.

(d) *Time and place of filing notification.*—The notification required by section 407 (c) (1) and this article shall be filed with the Commissioner of Internal Revenue, Washington, D. C., attention Income Tax Unit, Records Division, within 30 days after the date of the closing agreement, or the date upon which the decision of the Board or judgment becomes final, as the case may be.

(e) *Claim for deficiency dividends credit.*—For claims for deficiency dividends credits, see article 407–5.

ART. 407–4. *Credit or refund of deficiency paid.*—If the Commissioner has determined that there is a deficiency with respect to the tax imposed by Title IA for any taxable year beginning after December 31, 1937, and the corporation has paid any portion of such asserted deficiency, the corporation, under certain circumstances, is entitled to a credit or refund of such deficiency. The amount of the credit or refund is 65 percent of the amount of "deficiency dividends" (as defined in section 407 (c)) not in excess of $2,000, plus 75 percent of the amount of such dividends in excess of $2,000, and the allowance of the credit or refund is subject to the following conditions, qualifications and limitations:

(1) It must be established that the amount for which credit or refund is sought was the whole or a part of a deficiency at the time when paid, and such fact must be established as provided in section 407 (b) (1), (2) or (3);

(2) The corporation is required under section 407 (d), within 60 days after the date of the closing agreement or the date upon which the decision of the Board or the judgment becomes final to file a claim for credit or refund;

(3) The "deficiency dividends" are required under section 407 (c), to be paid prior to the filing of the claim for credit or refund and such dividends must be of such a nature as to constitue taxable dividends in the hands of such of the shareholders as are subject to taxation under Title I for the year in which paid (see section 27 (i)), and must be nonpreferential (see section 27 (h));

(4) The credit or refund shall not exceed the portion of the deficiency (not counting the interest, additional amounts, and additions to the tax, provided by law) which was paid by the corporation;

(5) The credit or refund shall be made as provided in section 322, but without regard to section 322 (b) (relating to the limitations on the allowance of refunds or credits), or section 322 (c) (relating to the effect of petitions to the Board on refunds or credits);

(6) No credit or refund shall be made under section 407 (b) with respect to any amount of tax paid after the date of the closing agreement, or the date the decision of the Board or the judgment becomes final, as the case may be; and

(7) No interest shall be allowed on the credit or refund.

ART. 407–5. *Claim for deficiency dividends credit or credit or refund.*—(a) *General.*—A claim for a deficiency dividends credit under section 407 (a), relating to credit against unpaid deficiency, and under section 407 (b), relating to credit or refund of deficiency paid, must be filed within 60 days after the date of the closing agreement, or the date upon which the decision of the Board or judgment becomes final, as the case may be.

(b) *Form of claim.*—The claim for a deficiency dividends credit, or credit or refund, shall be made in duplicate, under oath or affirmation, on Form 976, copies of which, upon request, may be procured from any collector.

(c) *Contents of claim.*—There shall be attached to and made a part of the claim a certified copy of the resolution of the board of directors, or other authority, authorizing the payment of the dividend with respect to which the claim is filed. In addition the claim shall, in accordance with the provisions of this article and the instructions on the form, set forth the following information:

(1) The name and address of the corporation;

(2) The place and date of incorporation;

(3) The amount of the deficiency determined with respect to the tax imposed by Title IA and the taxable year or years involved; the amount of the unpaid deficiency or, if the deficiency has been paid in whole or in part, the date of payment and the amount thereof; a statement as to how the deficiency was established, if unpaid, or if paid in whole or in part, how it was established that any portion of the amount paid was a deficiency at the time when paid and in either case whether it was by closing agreement, Board decision or court judgment and the date thereof; if established by a final judgment in a suit against the United States for refund, the date of payment of the deficiency, the date claim for refund was filed and the date the suit was brought; if established by a Board decision or court judgment a copy thereof shall be attached, together with an explanation of how the decision or judgment became final;

(4) The amount and date of payment of the dividend with respect to which the claim for deficiency dividends credit, or credit or refund, is filed;

(5) A statement setting forth the various classes of stock outstanding, the name and address of each shareholder, the class and number of shares held by each on the date of payment of the dividend with respect to which the claim is filed, and the amount of such dividend paid to each shareholder;

(6) The amount claimed as a deficiency dividends credit; and

(7) Such other information as may be required by the claim form.

(d) *Time and place of filing claim.*—The claim required by section 407 (d) and this article shall be filed with the Commissioner of Internal Revenue, Washington, D. C., attention Income Tax Unit, Records Division, within 60 days after the date of the closing agreement, or the date upon which the decision of the Board or judgment becomes final, as the case may be.

ART. 407–6. *Effect of deficiency dividends on dividends paid credit.*—No duplication of credit allowances with respect to any "deficiency dividends" is permitted. If a corporation claims and receives the benefit of the provisions of section 407 based upon a distribution of "deficiency dividends," that distribution does not become a part of the basic surtax credit for the purposes of Title IA; nor is it made the basis of the 2½-month carry-back credit provided for in section 405 (c).

ART. 407–7. *Suspension of statute of limitations and stay of collection.*—(a) *Suspension of running of statute.*—If a corporation files a notification of its intent to have certain dividends considered as "deficiency dividends" as provided in section 407 (c), then the running of the statute of limitations upon the assessment and collection of the established deficiency and all interest, additional amounts, and additions to the tax provided by law, is suspended for a period of two years after the date of the filing of such notification.

(b) *Stay of collection.*—The Act provides that, except in case of jeopardy, the collection of the established deficiency and all interest, additional amounts, and additions to the tax provided by law, is stayed for a period of 30 days subsequent to the final determination of the amount thereof. If within such 30-day period the corporation files with the Commissioner the prescribed notification of intention to seek the benefit of section

407, the collection of the established deficiency, to the extent of the amount of the credit specified by the corporation in such notification if not in excess of the amount allowable under section 407 (a), is, except in cases of jeopardy, stayed for a period of 60 days subsequent to the final determination of the amount thereof. The filing of a claim for a deficiency dividends credit under section 407 (d) effects a further stay of collection of that portion of the established deficiency covered by the claim if not in excess of the amount allowable under section 407 (a), until the date the claim is disallowed (in whole or in part) by the Commissioner. The Act further provides that where collection has been stayed as above indicated no distraint or proceeding in court shall be begun for the collection of the amount stayed during the period for which it is stayed. The Commissioner, notwithstanding the provisions of section 272 (b), may refrain from assessing the Title IA deficiency (plus interest, additional amounts, and additions to the tax) until the claim for the deficiency dividends credit is disposed of. After such claim is allowed or rejected, either in whole or in part, the entire amount of the deficiency (plus interest, additional amounts, and additions to the tax) will be assessed, if not already assessed. The amount of the claim for the deficiency dividends credit to the extent allowed will be credited against the amount so assessed, and the remainder of the amount assessed will be collected in the usual manner.

SEC. 408. *Meaning of terms used.*—The terms used in this title shall have the same meaning as when used in Title I.

SEC. 409. *Administrative provisions.*—All provisions of law (including penalties) applicable in respect of the taxes imposed by Title I, shall insofar as not inconsistent with this title, be applicable in respect of the tax imposed by this title, except that the provisions of section 131 shall not be applicable.

ART. 409–1. *Return and payment of tax.*—A separate return is required for the surtax imposed by section 401. Such returns shall be made on Form 1120H. In the case of a personal holding company which is a domestic corporation, the return is required to be made within the time provided by section 53 and in the case of a foreign corporation within the time provided in section 235. The tax shown by the corporation on its return must be paid in the case of a domestic corporation within the time provided in section 56 and in the case of a foreign corporation within the time provided in section 236. The same provisions of law relating to the period of limitations for assessment and collection which govern the taxes imposed by Title I also apply to the surtax imposed under Title IA. However, since the surtax imposed under Title IA is a distinct and separate tax from those imposed under Title I, the making of a return under Title I will not start the period of limitations for assessment of the surtax imposed under Title IA. If the corporation subject to section 401 fails to file a return the tax may be assessed at any time. If the Commissioner finds a deficiency in respect of the tax imposed by section 401 of Title IA, he is required to follow the same procedure which applies to deficiencies in income tax under Title I. The penalties applicable to the income taxes imposed under Title I, as well as the provisions of Title I relating to interest and additions to the tax, also apply to the surtax imposed by section 401. The administrative provisions applicable to the surtax imposed by section 401 are not confined to those contained in Title I but embrace all administrative provisions of law which have any application to income taxes.

ART. 409–2. *Determination of tax, assessment, collection.*—The determination, assessment and collection of the tax imposed by section 401 and the examination of returns and claims in connection therewith, will be made under such procedure as may be prescribed from time to time by the Commissioner.

SEC. 410. *Improper accumulation of surplus.*—For surtax on corporations which accumulate surplus to avoid surtax on shareholders, see section 102.

SEC. 411. *Foreign personal holding companies.*—For provisions relating to foreign personal holding companies and their shareholders, see Supplement P of Title I.

CHAPTER XXXVIII

Title VI—General Provisions

SEC. 901. *Definitions.*—(a) When used in this Act—

(1) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(2) The term "corporation" includes associations, joint-stock companies, and insurance companies.

(3) The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operations, or venture is carried on, and which is not, within the meaning of this Act, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(4) The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State or Territory.

(5) The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(6) The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(7) The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 143 or 144.

(8) The term "stock" includes the share in an association, joint-stock company, or insurance company.

(9) The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(10) The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(11) The term "Secretary" means the Secretary of the Treasury.

(12) The term "Commissioner" means the Commissioner of Internal Revenue.

(13) The term "collector" means collector of internal revenue.

(14) The term "taxpayer" means any person subject to a tax imposed by this Act.

(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

ART. 901–1. *Classification of taxables.*—For the purpose of taxation the Act makes its own classification and prescribes its own standards of classification. Local law is of no importance in this connection. Thus a trust may be classed as a trust or as an association (and, therefore, as a corporation), depending upon its nature or its activities. (See article 901–3.) The term "partnership" is not limited to the common law meaning of partnership, but is broader in its scope and includes groups not commonly called partnerships. (See article 901–4.) The term "corporation" is not limited to the artificial entity usually known as a corporation, but includes also an association, a trust classed as an association because of its nature or its activities, a joint-stock company, an insurance company, and certain kinds of partnerships. (See articles 901–2 and 901–4.) The definitions, terms, and classifications, as set forth in section 901, shall have the same respective meaning and scope in these regulations.

ART. 901–2. *Association.*—The term "association" is not used in the Act in any narrow or technical sense. It includes any organization, created for the transaction of designated affairs, or the attainment of some object, which, like a corporation, continues notwithstanding that its members or participants change, and the affairs of which, like corporate affairs, are conducted by a single individual, a committee, a board, or some other group, acting in a representative capacity. It is immaterial whether such organization is created by an agreement, a declaration of trust, a statute, or otherwise. It includes a voluntary association, a joint-stock association or company, a "business" trust, a "Massachusetts" trust, a "common law" trust, an "investment" trust (whether of the fixed or the management type), an interinsurance exchange operating through an attorney in fact, a partnership association, and any other type of organization (by whatever name known) which is not, within the meaning of the Act, a trust or an estate, or a partnership. If the conduct of the affairs of a corporation continues after the expiration of its charter, or the termination of its existence, it becomes an association.

ART. 901–3. *Association distinguished from trust.*—The term "trust," as used in the Act, refers to an ordinary trust, namely, one created by will or by declaration of the trustees or the grantor, the trustees of which take title to the property for the purpose of protecting or conserving it as customarily required under the ordinary rules applied in chancery and probate courts. The beneficiaries of such a trust generally do no more

than accept the benefits thereof and are not the voluntary planners or creators of the trust arrangement. Even though the beneficiaries do create such a trust, it is ordinarily done to conserve the trust property without undertaking any activity not strictly necessary to the attainment of that object.

As distinguished from the ordinary trust described in the preceding paragraph is an arrangement whereby the legal title to the property is conveyed to trustees (or a trustee) who, under a declaration or agreement of trust, hold and manage the property with a view to income or profit for the benefit of beneficiaries. Such an arrangement is designed (whether expressly or otherwise) to afford a medium whereby an income or profit-seeking activity may be carried on through a substitute for an organization such as a voluntary association or a joint-stock company or a corporation, thus obtaining the advantages of those forms of organization without their disadvantages. The nature and purpose of a cooperative undertaking will differentiate it from an ordinary trust. The purpose will not be considered narrower than that which is formally set forth in the instrument under which the activities of the trust are conducted.

If a trust is an undertaking or arrangement conducted for income or profit, the capital or property of the trust being supplied by the beneficiaries, and if the trustees or other designated persons are, in effect, the managers of the undertaking or arrangement, whether the beneficiaries do or do not appoint or control them, the beneficiaries are to be treated as voluntarily joining or cooperating with each other in the trust, just as do members of an association, and the undertaking or arrangement is deemed to be an association classified by the Act as a corporation. However, the fact that the capital or property of the trust is not supplied by the beneficiaries is not sufficient reason in itself for classifying the arrangement as an ordinary trust rather than as an association.

By means of such a trust the disadvantages of an ordinary partnership are avoided, and the trust form affords the advantages of unity of management and continuity of existence which are characteristic of both associations and corporations. This trust form also affords the advantages of capacity, as a unit to acquire, hold, and dispose of property and the ability to sue and be sued by strangers or members, which are characteristic of a corporation; and also frequently affords the limitation of liability and other advantages characteristic of a corporation. These advantages which the trust form provides are frequently referred to as resemblance to the general form, mode of procedure, or effectiveness in action, of an association or a corporation, or as "quasi-corporate form." The effectiveness in action in the case of a trust or of a corporation does not depend upon technical arrangements or devices such as the appointment or election of a president, secretary, treasurer, or other "officer," the use of a "seal," the issuance of certificates to the beneficiaries, the holding of meetings by managers or beneficiaries, the use of a "charter" or "by-laws," the existence of "control" by the benficiaries over the affairs of the organization, or upon other minor elements. They serve to emphasize the fact that an organization possessing them should be treated as a corporation, but they are not essential to such classification, for the fundamental benefits enjoyed by a corporation, as outlined above, are attained, in the case of a trust, by the use of the trust form *itself*. The Act disregards the technical distinction between a trust agreement (or declaration) and ordinary articles of association or a corporate charter, and all other differences of detail. It treats such a trust according to its essential nature, namely, as an association. This is true whether the beneficiaries form the trust or, by purchase or otherwise, acquire an interest in an existing trust.

The mere size or amount of capital invested in the trust is of no importance. Sometimes the activity of the trust is a small venture or enterprise, such as the division and sale of a parcel of land, the erection of a building, or the care and rental of an office building or apartment house; sometimes the activity is a trade or business on a much larger scale. The distinction is that between the activity or purpose for which an ordinary strict trust of the traditional type would be created, and the activity or purpose for which a corporation for profit might have been formed.

ART. 901–4. *Partnerships.*—The Act provides its own concept of a partnership. Under the term "partnership" it includes not only a partnership as known at common law but, as well, a syndicate, group, pool, joint venture, or other unincorporated organization which carries on any business, financial operation, or venture, and which is not, within the meaning of the Act, a trust, estate, or a corporation. On the other hand the Act classifies under the term "corporation" an association or joint-stock company, the members of which may be subject to the personal liability of partners. If an organization is not interrupted by the death of a member or by a change in ownership of a participating interest during the agreed period of its existence, and its management is centralized in one or more persons in their representative capacities, such an organization is an association, taxable as a corporation. As to the characteristics of an association, see also articles 901–2 and 901–3. The following examples will illustrate some phases of these distinctions:

(1) If A and B buy some acreage for the purpose of subdivision, they are joint adventurers, and the joint venture is classified by the Act as a partnership.

(2) A, B, and C contribute $10,000 each for the purpose of buying and selling real estate. If A, B, C, or D, an outside party (or any combination of them as long as the approval of each participant is not required for syndicate action), takes control of the money, property and business of the enterprise, and the syndicate is not terminated on the death of any of the participants, the syndicate is classified as an association.

ART. 901–5. *Limited partnership as corporation.*—Limited partnerships of the type of partnerships with limited liability or partnership associations authorized by the statutes of Michigan, Pennsylvania, and a few other States are only nominally partnerships. Such so-called limited partnerships, offering opportunity for limiting the liability of all the members, providing for the transferability of partnership shares, or having other material characteristics of corporate form, must make returns of income and pay the tax as corporations. In all doubtful cases limited partnerships will be treated as corporations unless they submit satisfactory proof that they are not in effect so organized.

ART. 901–6. *Limited partnership as partnership.*—Limited partnerships of the type authorized by the statutes of New York and many other States are ordinarily partnerships and not corporations within the meaning of the Act. Such limited partnerships, which can not limit the liability of the general partners, although the special partners enjoy limited liability so long as they observe the statutory conditions, which are dissolved by the death or attempted transfer of the interest of a general partner, and which can not take real estate or sue in the partnership name, are so like common law partnerships as to render impracticable any differentiation in their treatment for tax purposes.

ART. 901–7. *Insurance company.*—Insurance companies include both stock and mutual companies, as well as mutual benefit insurance companies. A voluntary unincorporated association of employees formed for the purpose of relieving sick and aged members and the dependents of deceased members is an insurance company, whether the fund for such purpose is created wholly by membership dues or partly by contributions from the employer. A corporation which merely sets aside a fund for the insurance of its employees is not required to file a separate return for such fund, but the income therefrom shall be included in the return of the corporation.

Though its name, charter powers and subjection to State insurance laws are significant in determining the business which a corporation is authorized and intends to carry on, the character of the business actually done in the taxable year determines whether it is taxable as an

insurance company under the Act. For example, during the year 1938 the M Corporation, incorporated under the insurance laws of the State of R, carried on the business of lending money in addition to guaranteeing the payment of principal and interest of mortgage loans. Of its total income for the year one-third was derived from its insurance business of guaranteeing the payment of principal and interest of mortgage loans and two-thirds was derived from its noninsurance business of lending money. The M Corporation is not an insurance company for the year 1938 within the meaning of the Act and these regulations.

ART. 901–8. *Domestic, foreign, resident, and nonresident persons.*—A domestic corporation is one organized or created in the United States, including only the States, the Territories of Alaska and Hawaii, and the District of Columbia, or under the law of the United States or of any State or Territory, and a foreign corporation is one which is not domestic. A domestic corporation is a resident corporation even though it does no business and owns no property in the United States. A foreign corporation engaged in trade or business within the United States or having an office or place of business therein is referred to in these regulations as a resident foreign corporation, and a foreign corporation not engaged in trade or business within the United States and not having any office or place of business therein, as a nonresident foreign corporation. A partnership engaged in trade or business within the United States or having an office or place of business therein is referred to in these regulations as a resident partnership, and a partnership not engaged in trade or business within the United States and not having any office or place of business therein, as a nonresident partnership. Whether a partnership is to be regarded as resident, or nonresident is not determined by the nationality or residence of its members or by the place in which it was created or organized. The term "nonresident alien," as used in these regulations, includes a nonresident alien individual and a nonresident alien fiduciary.

ART. 901–9. *Fiduciary.*—"Fiduciary" is a term which applies to persons that occupy positions of peculiar confidence toward others, such as trustees, executors, and administrators. A fiduciary for income tax purposes is a person who holds in trust an estate to which another has the beneficial title or in which another has a beneficial interest, or receives and controls income of another, as in the case of receivers. A committee or guardian of the property of an incompetent person is a fiduciary.

ART. 901–10. *Fiduciary distinguished from agent.*—There may be a fiduciary relationship between an agent and a principal, but the word "agent" does not denote a fiduciary. An agent having entire charge of property, with authority to effect and execute leases with tenants entirely on his own responsibility and without consulting his principal, merely turning over the net profits from the property periodically to his principal by virtue of authority conferred upon him by a power of attorney, is not a fiduciary within the meaning of the Act. In cases where no legal trust has been created in the estate controlled by the agent and attorney, the liability to make a return rests with the principal.

SEC. 902. *Separability clause.*—If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

SEC. 903. *Effective date of act.*—Except as otherwise provided, this Act shall take effect upon its enactment.

[Received by the President, May 16, 1938.]

[*Note by the Department of State.*—The foregoing act having been presented to the President of the United States for his approval, and not having been returned by him to the House of Congress in which it originated within the time prescribed by the Constitution of the United States, has become a law without his approval.]

ART. 903–1. *Effective date of Act.*—The date of the enactment of the Act is May 28, 1938.

In pursuance of the Act the foregoing regulations are hereby prescribed and Treasury Decisions 4809, 4810, 4811, 4814, 4865, 4874, and 4875 heretofore issued under Title I are hereby superseded.

[SEAL] GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved, February 7, 1939.

H. MORGENTHAU, JR.,
Secretary of the Treasury.

APPENDIX

Certain General Provisions of Law and Regulations Applicable to the Tax Imposed on Net Income by Titles I and IA, and on Excess Profits by Title III, of the Revenue Act of 1938, and Certain Provisions of Regulation F of Board of Governors of Federal Reserve System Effective December 1, 1937

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Adjustments of Carriers' Tax Liabilities to Conform to Recapture Payments

PARAGRAPH 1. The Interstate Commerce Commission shall, as soon as practicable after its order with respect to the amount recoverable from any carrier under the provisions of section 15a of the Interstate Commerce Act, as amended, for any year or portion thereof has become final, and such amount, if any, has been paid, certify to the Commissioner of Internal Revenue the amount so paid. If the amount so paid by such carrier differs from the amount allowed as so recoverable in computing the income or excess profits tax liabilities for any taxable period of such carrier, or of any corporation whose income or excess profits tax liability is affected, the Commissioner of Internal Revenue shall determine any deficiency or overpayment attributable to such difference. Notwithstanding any other provision of law, (1) any such deficiency may be assessed within two years from the date of such certification, and, if so assessed, shall be paid upon notice and demand from the collector, and (2) any such overpayment may be credited or refunded within two years from the date of such certification, but not after unless, before the expiration of such period, a claim therefor is filed. This section shall not be held to affect the provisions of section 1106 (b) of the Revenue Act of 1926 or 606 of the Revenue Act of 1928. (Section 1107, Revenue Act of 1932.)

Administrative Review

PAR. 2. In the absence of fraud or mistake in mathematical calculation, the findings of facts in and the decision of the Commissioner upon (or in case the Secretary is authorized to approve the same, then after such approval) the merits of any claim presented under or authorized by the internal-revenue laws shall not, except as provided in Title IX of the Revenue Act of 1924, as amended,

be subject to review by any other administrative or accounting officer, employee, or agent of the United States. (Section 1107, Revenue Act of 1926.)

Board of Tax Appeals

Membership

PAR. 3. The Board of Tax Appeals (hereinafter referred to as the "Board") is hereby continued as an independent agency in the Executive Branch of the Government. The Board shall be composed of 16 members; except that such limitation shall not be held applicable to any member holding office under an appointment made before the enactment of the Revenue Act of 1926, in accordance with the law in force prior to the enactment of such Act. (Section 900, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926.)

PAR. 4. (a) Members of the Board shall be appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office. Members of the Board may be removed by the President, after notice and opportunity for public hearing, for inefficiency, neglect of duty, or malfeasance in office, but for no other cause. Each member shall receive salary at the rate of $10,000 per annum.

(b) The terms of office of all members who are to compose the Board prior to June 2, 1926, shall expire at the close of business on June 1, 1926. The terms of office of the sixteen members first taking office after such date shall expire, as designated by the President at the time of nomination, four at the end of the sixth year, four at the end of the eighth year, four at the end of the tenth year, and four at the end of the twelfth year, after June 2, 1926. The terms of office of all successors shall expire twelve years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. (Section 901, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926.)

PAR. 5. A member of the Board removed from office in accordance with subdivision (a) of section 901 shall not be permitted at any time to practice before the Board. (Section 902, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926.)

Organization and Procedure

PAR. 6. The Board shall at least biennially designate a member to act as chairman. The Board shall have a seal which shall be judicially noticed. (Section 903, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926.)

The Board and its divisions shall have such jurisdiction as is conferred on them by Title II and Title III of the Revenue Act of 1926 or by subsequent laws. The Board is authorized to impose a fee in an amount not in excess of $10 to be fixed by the Board for the filing of any petition for the redetermination of a deficiency after the enactment of the Revenue Act of 1926 and for the hearing of any proceeding pending at the time of such enactment. (Section 904, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926.)

A majority of the members of the Board or of any division thereof shall constitute a quorum for the transaction of the business of the Board or of the division, respectively. A vacancy in the Board or in any division thereof shall not impair the powers nor affect the duties of the Board or division nor of the remaining members of the Board or division, respectively. (Section 905, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926.)

PAR. 7. (a) The chairman may from time to time divide the Board into divisions of one or more members, assign the members of the Board thereto, and in case of a division of more than one member, designate the chief thereof. If a division, as a result of a vacancy or the absence or inability of a member assigned thereto to serve thereon, is composed of less than the number of members designated for the division, the chairman may assign other members to the division or direct the division to proceed with the transaction of business without awaiting any additional assignment of members thereto. A division shall hear, and make a determination upon, any proceeding instituted before the Board and any motion in connection therewith, assigned to such division by the chairman, and shall make a report of any such determination which constitutes its final disposition of the proceeding.

(b) The report of the division shall become the report of the Board within 30 days after such report by the division, unless within such period the chairman has directed that such report shall be reviewed by the Board. Any preliminary action by a division which does not form the basis for the entry of the final decision shall not be subject to review by the Board except in accordance with such rules as the Board may prescribe. The report of a division shall not be a part of the record in any case in which the chairman directs that such report shall be reviewed by the Board.

(c) If a petition for a redetermination of a deficiency has been filed by the taxpayer, a decision of the Board dismissing the proceeding shall be considered as its decision that the deficiency is the amount determined by the Commissioner. An order specifying such amount shall be entered in the records of the Board unless the Board cannot determine such amount from the record in the proceeding, or unless the dismissal is for lack of jurisdiction.

(d) A decision of the Board (except a decision dismissing a proceeding for lack of jurisdiction) shall be held to be rendered upon the date that an order specifying the amount of the deficiency is entered in the records of the Board. If the Board dismisses a proceeding for reasons other than lack of jurisdiction and is unable from the record to determine the amount of the deficiency determined by the Commissioner, or if the Board dismisses a proceeding for lack of jurisdiction, an order to that effect shall be entered in the records of the Board, and the decision of the Board shall be held to be rendered upon the date of such entry.

(e) If the assessment or collection of any tax is barred by any statute of limitations, the decision of the Board to that effect shall be considered as its decision that there is no deficiency in respect of such tax.

(f) The findings of the Board made in connection with any decision prior to the enactment of the Revenue Act of 1926 shall, notwithstanding the enactment of such Act, continue to be prima facie evidence of facts therein stated. (Section 906, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926, and amended by section 601, Revenue Act of 1928.)

PAR. 8. (a) Notice and opportunity to be heard upon any proceeding instituted before the Board shall be given to the taxpayer and the Commissioner, and a report upon the proceeding and a decision thereon shall be made as quickly as practicable. The decision shall be made by a member in accordance with the report of the Board, and such decision so made shall, when entered, be the decision of the Board. If an opportunity to be heard upon the proceeding is given before a division of the Board, neither the taxpayer nor the Commissioner shall be entitled to notice and opportunity to be heard before the Board upon review, except upon a specific order of the chairman. Hearings before the Board and its divisions shall be open to the public, and the testimony, and, if the Board so requires, the argument shall be stenographically reported. The Board is authorized to contract (by renewal of contract or otherwise) for the reporting of such hearings, and in such contract to fix the terms and conditions under which transcripts will be supplied by the contractor to the Board and to other persons and agencies. The proceedings of the Board and its divisions shall be conducted in accordance with such rules of practice and procedure (other than rules of evidence) as the Board may prescribe and in accordance with the rules of evidence applicable in courts of equity of the District of Columbia. In any proceeding involving the issue whether the petitioner has been guilty of fraud with intent to evade tax, where no hearing has been held before the enactment of the Revenue Act of 1928, the burden of proof in respect of such issue shall be upon the

Commissioner. The mailing by registered mail of any pleading, decision, order, notice, or process in respect of proceedings before the Board shall be held sufficient service of such pleading, decision, order, notice, or process.

(b) It shall be the duty of the Board and of each division to include in its report upon any proceedings its findings of fact or opinion or memorandum opinion. The Board shall report in writing all its findings of fact, opinions and memorandum opinions.

(c) All reports of the Board and all evidence received by the Board and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public; except that after the decision of the Board in any proceeding has become final the Board may, upon motion of the taxpayer or the Commissioner, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits, introduced in evidence before the Board or any division; or the Board may, on its own motion, make such other disposition thereof as it deems advisable.

(d) The Board shall provide for the publication of its reports at the Government Printing Office in such form and manner as may be best adapted for public information and use, and such authorized publication shall be competent evidence of the reports of the Board therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. Such reports shall be subject to sale in the same manner and upon the same terms as other public documents.

(e) The principal office of the Board shall be in the District of Columbia, but the Board or any of its divisions may sit at any place within the United States. The times and places of the meetings of the Board and of its divisions shall be prescribed by the chairman with a view to securing reasonable opportunity to taxpayers to appear before the Board or any of its divisions, with as little inconvenience and expense to taxpayers as is practicable.

(f) The Secretary of the Treasury shall provide the Board with suitable rooms in courthouses or other buildings when necessary for hearings by the Board, or any division thereof, outside the District of Columbia.

(g) When the incumbent of the office of Commisioner changes, no substitution of the name of his successor shall be required in proceedings pending after the date of the enactment of the Revenue Act of 1934 before any appellate court reviewing the action of the Board. (Section 907, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926, and amended by section 601, Revenue Act of 1928, subsection (g) being added by section 516, Revenue Act of 1934.)

Witnesses

PAR. 9. For the efficient administration of the functions vested in the Board or any division thereof, any member of the Board, or any employee of the Board designated in writing for the purpose by the chairman, may administer oaths, and any member of the Board may examine witnesses and require, by subpoena ordered by the Board or any division thereof and signed by member, (1) the attendance and testimony of witnesses, and the production of all necessary returns, books, papers, documents, correspondence, and other evidence, from any place in the United States at any designated place of hearing, or (2) the taking of a deposition before any designated individual competent to administer oaths under this Act. In the case of a deposition the testimony shall be reduced to writing by the individual taking the deposition or under his direction and shall then be subscribed by the deponent. (Section 908, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926.)

(a) Any witness summoned or whose deposition is taken under section 908 shall receive the same fees and mileage as witnesses in courts of the United States. Such fees and mileage and the expenses of taking any such deposition shall be paid as follows:

(1) In the case of witnesses for the Commissioner, such payments shall be made by the Secretary out of any moneys appropriated for the collection of internal-revenue taxes, and may be made in advance.

(2) In the case of any other witnesses, such payments shall be made, subject to rules prescribed by the Board, by the party at whose instance the witness appears or the deposition is taken.

(b) This section shall take effect as of June 2, 1924, in the case of fees, mileage, or expenses accrued prior to, but remaining unpaid at the time of, the enactment of the Revenue Act of 1926. (Section 909, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926.)

Expenditures and Personnel

PAR. 10. The members of the Board shall receive necessary traveling expenses, and expenses actually incurred for subsistence while traveling on duty and away from their designated stations, subject to the same limitations in amount as are now or may hereafter be applicable to the Board of General Appraisers. The employees of the Board shall receive their necessary traveling expenses, and expenses actually incurred for subsistence while traveling on duty and away from their designated stations, in an amount not to exceed $5 per day. The Board is authorized in accordance with the civil service laws to appoint, and in accordance with the Classification Act of 1923 to fix the compensation of such employees, and to make such expenditures (including expenditures for personal services and rent at the seat of Government and elsewhere, and for law books, books of reference, and periodicals), as may be necessary efficiently to execute the functions vested in the Board. All expenditures of the Board shall be allowed and paid, out of any moneys appropriated for the purposes of the Board, upon presentation of itemized vouchers therefor signed by the chairman. All fees received by the Board shall be covered into the Treasury as miscellaneous receipts. Section 3709 of the Revised Statutes of the United States shall not be construed to apply to any purchase or service rendered for the Board when the aggregate amount involved does not exceed the sum of $25. (Section 910, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926.)

Frivolous Appeals

PAR. 11. Whenever it appears to the Board that proceedings before it have been instituted by the taxpayer merely for delay, damages in an amount not in excess of $500 shall be awarded to the United States by the Board in its decision. Damages so awarded shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax. (Section 911, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926.)

Transferee Proceedings

BURDEN OF PROOF—PRELIMINARY EXAMINATION

PAR. 12. In proceedings before the Board the burden of proof shall be upon the Commissioner to show that a petitioner is liable as a transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax. (Section 912, Revenue Act of 1924, as added by section 602, Revenue Act of 1928.)

Upon application to the Board, a transferee of property of a taxpayer shall be entitled, under rules prescribed by the Board, to a preliminary examination of books, papers, documents, correspondence, and other evidence of the taxpayer or a preceding transferee of the taxpayer's property, if the transferee making the application is a petitioner before the Board for the redetermination of his liability in respect of the tax (including interest, penalties, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer. Upon such application the Board may require by subpoena, ordered by the Board or any division thereof and signed by a member the production of all such books, papers, documents, correspondence, and other evidence within the United States the production of which, in the opinion of the Board or division thereof, is necessary to enable the transferee to ascertain the liability of the taxpayer or preceding

transferee and will not result in undue hardship to the taxpayer or preceding transferee. Such examination shall be had at such time and place as may be designated in the subpoena. (Section 913, Revenue Act of 1924, as added by section 602, Revenue Act of 1928.)

Review of Board's Decision by Courts

PAR. 13. (a) The decision of the Board rendered after the enactment of this Act (except as provided in subdivision (j) of section 283 and in subdivision (h) of section 318) may be reviewed by a Circuit Court of Appeals, or the Court of Appeals of the District of Columbia, as hereinafter provided, if a petition for such review is filed by either the Commissioner or the taxpayer within three months after the decision is rendered.

(b) Such courts are authorized to adopt rules for the filing of such petition, the preparation of the record for review, and the conduct of proceedings upon such review and, until the adoption of such rules, the rules of such courts relating to appellate proceedings upon a writ of error, so far as applicable, shall govern.

(c) Notwithstanding any provision of law imposing restrictions on the assessment and collection of deficiencies, such review shall not operate as a stay of assessment or collection of any portion of the amount of the deficiency determined by the Board unless a petition for review in respect of such portion is duly filed by the taxpayer, and then only if the taxpayer (1) on or before the time his petition for review is filed has filed with the Board a bond in a sum fixed by the Board not exceeding double the amount of the portion of the deficiency in respect of which the petition for review is filed, and with surety approved by the Board, conditioned upon the payment of the deficiency as finally determined, together with any interest, additional amounts, or additions to the tax provided for by law, or (2) has filed a jeopardy bond under the income or estate tax laws. If as a result of a waiver of the restrictions on the assessment and collection of a deficiency any part of the amount determined by the Board is paid after the filing of the review bond, such bond shall, at the request of the taxpayer, be proportionately reduced.

(d) In cases where assessment or collection has not been stayed by the filing of a bond, then if the amount of the deficiency determined by the Board is disallowed in whole or in part by the court, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim therefor, or, if collection has not been made, shall be abated.

(e) Nothing in subdivision (c) shall be construed as relieving the petitioner from making or filing such undertakings as the court may require as a condition of or in connection with the review. (Section 1001, Revenue Act of 1926, as amended by section 603, Revenue Act of 1928, and by section 1101, Revenue Act of 1932.)

Venue

PAR. 14. (a) Except as provided in subdivision (b), such decision may be reviewed by the Circuit Court of Appeals for the circuit in which is located the collector's office to which was made the return of the tax in respect of which the liability arises or, if no return was made, then by the Court of Appeals of the District of Columbia.

(b) Notwithstanding the provisions of subsection (a), such decision may be reviewed by any Circuit Court of Appeals, or the Court of Appeals of the District of Columbia, which may be designated by the Commissioner and the taxpayer by stipulation in writing. (Section 1002, Revenue Act of 1926, as amended by section 519, Revenue Act of 1934.)

PAR. 15. (a) The Circuit Courts of Appeals and the Court of Appeals of the District of Columbia shall have exclusive jurisdiction to review the decisions of the Board (except as provided in section 239 of the Judicial Code, as amended); and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 240 of the Judicial Code, as amended.

(b) Upon such review, such courts shall have power to affirm or, if the decision of the Board is not in accordance with law, to modify or to reverse the decision of the Board, with or without remanding the case for a rehearing, as justice may require. (Section 1003, Revenue Act of 1926.)

(a) The Circuit Courts of Appeals, the Court of Appeals of the District of Columbia, and the Supreme Court shall have power to impose damages in any case where the decision of the Board is affirmed and it appears that the petition was filed merely for delay.

(b) The Board is authorized to fix a fee, not in excess of the fee fixed by law to be charged and collected therefor by the clerks of the district courts, for comparing, or for preparing and comparing, a transcript of the record, or for copying any record, entry, or other paper and the comparison and certification thereof. (Section 1004, Revenue Act of 1926, as amended by section 1102, Revenue Act of 1932.)

Date When Board's Decision Becomes Final

PAR. 16. (a) The decision of the Board shall become final—

(1) Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; or

(2) Upon the expiration of the time allowed for filing a petition for certiorari, if the decision of the Board has been affirmed or the petition for review dismissed by the Circuit Court of Appeals and no petition for certiorari has been duly filed; or

(3) Upon the denial of a petition for certiorari, if the decision of the Board has been affirmed or the petition for review dismissed by the Circuit Court of Appeals; or

(4) Upon the expiration of 30 days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the decision of the Board be affirmed or the petition for review dismissed.

(b) If the Supreme Court directs that the decision of the Board be modified or reversed, the decision of the Board rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of 30 days from the time it was rendered, unless within such 30 days either the Commissioner or the taxpayer has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Board shall become final when so corrected.

(c) If the decision of the Board is modified or reversed by the Circuit Court of Appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the Court has been affirmed by the Supreme Court, then the decision of the Board rendered in accordance with the mandate of the Circuit Court of Appeals shall become final on the expiration of 30 days from the time such decision of the Board was rendered, unless within such 30 days either the Commissioner or the taxpayer has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the Board shall become final when so corrected.

(d) If the Supreme Court orders a rehearing; or if the case is remanded by the Circuit Court of Appeals to the Board for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the decision of the Board rendered upon such rehearing shall become final in the same manner as though no prior decision of the Board had been rendered.

(e) As used in this section—

(1) The term "Circuit Court of Appeals" includes the Court of Appeals of the District of Columbia;

(2) The term "mandate," in case a mandate has been recalled prior to the expiration of 30 days from the date of issuance thereof, means the final mandate. (Section 1005, Revenue Act of 1926.)

Closing Agreements

PAR. 17. (a) *Authorization.*—The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner) is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal-revenue tax for any taxable period.

(b) *Finality of agreements.*—If such agreement is approved by the Secretary, the Under Secretary, or an Assistant Secretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

(c) Section 1106 (b) of the Revenue Act of 1926 is repealed, effective on the expiration of 30 days after the enactment of this Act, but such repeal shall not affect any agreement made before such repeal takes effect. (Section 606, Revenue Act of 1928, as amended by sections 801 and 802, Revenue Act of 1938.)

PAR. 18. Closing agreements provided for in section 606 of the Revenue Act of 1928, as amended, may relate to any taxable period ending prior or subsequent to the date of the agreement. With respect to taxable periods ending prior to the date of the agreement, the matter agreed upon may relate to the total tax liability of the taxpayer or it may relate to one or more separate items affecting the tax liability of the taxpayer, as for example, the amount of gross income deductions for losses, depreciation or depletion, or the year for which an item of income is to be included in gross income or the year for which an item of loss is to be deducted, or the value of property on a specified date. A closing agreement may also be entered into in order to provide a "determination under the income tax laws" as defined in section 820 (a) (1) (A) of the Revenue Act of 1938. With respect to taxable periods ending subsequent to the date of the agreement, the matter agreed upon may relate only to one or more separate items affecting the tax liability of the taxpayer. The following, among others, are examples of the latter type of closing agreement: (1) A taxpayer may sell a portion of his holdings in a particular stock. A closing agreement may be entered into fixing the cost of other legal factor determining the basis for computing gain or loss on such sale, and, at the same time fixing the cost or other legal factor determining the basis (unless or until the statute is changed to require the use of some other factor to determine basis) of the remaining portion of the stock still held by the taxpayer upon which gain or loss will be computed when the taxpayer sells such stock in a later year; (2) if the taxpayer is undecided whether to sell property or hold it, or as to the price at which to sell it, a closing agreement may be entered into determining the market value of the property as of March 1, 1913, for future taxable periods, prior to the consummation of the sale by the taxpayer. A closing agreement with respect to any taxable period ending subsequent to the date of the agreement is subject to any change in or modification of the law enacted subsequent to the date of the agreement and applicable to such taxable period, and each closing agreement shall so recite. Closing agreements may be executed even though under the agreement the taxpayer is not liable for any tax for the period to which the agreement relates. There may be a series of agreements relating to the tax liability for a single period. Any tax or deficiency in tax determined pursuant to a closing agreement shall be assessed and collected, and any overpayment determined pursuant thereto shall be credited or refunded in accordance with the applicable provisions of law.

The procedure in the Bureau of Internal Revenue with respect to applications for entering into closing agreements in accordance with these regulations will be under such rules as may be prescribed from time to time by the Commissioner.

These regulations apply to any closing agreement entered into on and after May 28, 1938, the date of the enactment of the Revenue Act of 1938. Article 1301 of Regulations 74 is hereby superseded. (Article 1, Treasury Decision 4855, approved August 18, 1938.)

Collection of Taxes

Acceptance of Treasury Bills, Treasury Certificates, and Treasury Notes

PAR. 19. Collectors of internal revenue are authorized and directed to receive, at par or dollar face amount, in payment of income and profits taxes which the taxpayer is required to pay on the date of maturity of the bills, certificates or notes, respectively, that is, taxes due for the first time on that date and which would be overdue thereafter, Treasury bills, Treasury certificates of indebtedness and Treasury notes, the maturity dates of which are the 15th day of any calendar month, and which according to the express terms of their issue are made acceptable in payment of income and profits taxes. Collectors are not authorized hereunder to receive in payment of taxes any Treasury bills, Treasury certificates of indebtedness or Treasury notes which are not according to the express terms of their issue made acceptable in payment of taxes, nor any such bills, certificates or notes which mature on a date other than the date on which the taxes, in payment of which the bills, certificates or notes, respectively, are tendered, are required to be paid. When the taxes are due on Sunday, the bills, certificates or notes in payment thereof may be accepted on the following day. In all other cases collectors are authorized to receive Treasury bills, Treasury certificates of indebtedness and Treasury notes in payment of income and profits taxes only on the date of maturity of the bills, certificates or notes, or within a reasonable time immediately prior thereto. All interest coupons attached to Treasury certificates of indebtedness and Treasury notes shall be detached by the taxpayer before presentation to the collector and collected in ordinary course when due. Receipts given by collectors to taxpayers shall show the description of the bills, certificates or notes received in payment of taxes, including the exact dollar face amount thereof, and that the bills, certificates or notes, respectively, are tendered by the taxpayer and received by the collector, subject to no condition, qualification or reservation whatsoever, in payment of no more than an amount of taxes equal to such dollar face amount. Collectors shall in no case pay interest on the bills, certificates or notes, or accept them for an amount less or greater than their dollar face amount. If any bills, certificates of indebtedness or notes are offered in payment of income or profits taxes subject to any condition, qualification or reservation whatsoever, or for any greater amount than the par or dollar face amount thereof, they will not be deemed to be duly tendered and the collectors shall refuse any such offer and return the bills, certificates of indebtedness or notes, respectively, to the taxpayer immediately. (Article 1, Treasury Decision 4703, approved November 3, 1936.)

PAR. 20. For the purpose of saving taxpayers the expense of transmitting such bills, certificates or notes as are held in Federal reserve cities or Federal reserve branch bank cities to the office of the collector in whose district the taxes are payable, taxpayers desiring to pay income and profits taxes by such Treasury bills, Treasury certificates of indebtedness or Treasury notes acceptable in payment of taxes, should communicate with the collector of the district in which the taxes are payable and request from him authority to deposit such bills, certificates or notes with the Federal reserve bank in the city in which the bills, certificates or notes are held. Collectors are authorized to permit deposits of Treasury bills, Treasury certificates of indebtedness or Treasury notes in any Federal reserve bank, with the express understanding that the Federal reserve bank is to issue a certificate of deposit in the collector's name covering the dol-

lar face amount of the bills, certificates or notes, and to state on the face of the certificate of deposit that the amount represented thereby is in payment of an equal dollar amount of income or profits taxes. The Federal reserve bank should forward the original certificate of deposit to the Treasurer of the United States with its daily transcript, and transmit the duplicate to the Commissioner of Internal Revenue, Accounts and Collections Unit, Washington, D. C., and the triplicate to the collector, accompanied by a statement giving the name of the taxpayer for whom the payment is made, in order that the collector may make the necessary record. Receipts given by the Federal reserve banks to the taxpayers for the bills, certificates or notes deposited by such taxpayers should show the description of such bills, certificates or notes received in payment of taxes, including the exact dollar face amount thereof, and that the bills, certificates of notes, respectively, are tendered by the taxpayer and received by the Federal reserve bank, subject to no condition, qualification or reservation whatsoever, in payment of no more than an amount of taxes equal to such dollar face amount. (Article 2, in part, Treasury Decision 4703, approved November 3, 1936.)

Checks in Payment of Taxes

PAR. 21. (a) It shall be lawful for collectors of customs and of internal revenue to receive for duties on imports and internal taxes certified checks drawn on National and State banks, and trust companies during such time and under such regulations as the Secretary of the Treasury may prescribe. No person, however, who may be indebted to the United States on account of duties on imports or internal taxes who shall have tendered a certified check or checks as provisional payment for such duties or taxes, in accordance with the terms of this Act, shall be released from the obligation to make ultimate payment thereof until such certified check so received has been duly paid; and if any such check so received is not duly paid by the bank on which it is drawn and so certifying, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check upon all the assets of such bank; and such amount shall be paid out of its assets in preference to any or all other claims whatsoever against said bank, except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank. (Act of March 2, 1911, chapter 191, section 1, 36 Stat. 965.)

(b) It shall be lawful for collecting officers to receive certified checks drawn on National and State banks and trust companies, during such time and under such regulations as the Secretary of the Treasury may prescribe, in payment for duties on imports, internal taxes, and all public dues, including special customs deposits; and the Act of March second, nineteen hundred and eleven, entitled "An Act to authorize the receipt of certified checks for duties on imports and internal taxes," is hereby amended accordingly. (Act of March 3, 1913, chapter 119, 37 Stat. 733.)

Payment of and Receipt for Taxes

PAR. 22. (a) Collectors may receive, at par with an adjustment for accrued interest, notes or certificates of indebtedness issued by the United States and uncertified checks in payment of income, war-profits, and excess-profits taxes and any other taxes payable other than by stamp, during such time and under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions to the same extent as if such check had not been tendered.

(b) Every collector to whom any payment of any income tax is made shall upon request give to the person making such payment a full written or printed receipt, stating the amount paid and the particular account for which such payment was made; and whenever any debtor pays taxes on account of payments made or to be made by him to separate creditors the collector shall, if requested by such debtor, give a separate receipt for the tax paid on account of each creditor in such form that the debtor can conveniently produce such receipts separately to his several creditors in satisfaction of their respective demands up to the amounts stated in the receipts; and such receipt shall be sufficient evidence in favor of such debtor to justify him in withholding from his next payment to his creditor the amount therein stated; but the creditor may, upon giving to his debtor a full written receipt acknowledging the payment to him of any sum actually paid and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt. (Section 1118, in part, Revenue Act of 1926.)

Receipts for Payment

PAR. 23. It shall be the duty of the collectors, or their deputies, in their respective districts, and they are authorized, to collect all the taxes imposed by law, however the same may be designated. And every collector and deputy collector shall give receipts for all sums collected by him, excepting only when the same are in payment for stamps sold and delivered; but no collector or deputy collector shall issue a receipt in lieu of a stamp representing a tax. (Section 3183, Revised Statutes, as amended by chapter 125, Section 3, Act of March 1, 1879, 20 Stat. 331.)

Suits to Restrain, Barred

PAR. 24. No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court. (Section 3224, Revised Statutes.)

Uncertified Checks

PAR. 25. Collectors may accept uncertified checks in payment of income, war-profits, and excess-profits taxes, provided such checks are collectible at par, that is, for their full amount, without any deduction for exchange or other charges. The collector will stamp on the face of each check before deposit the words "This check is in payment of an obligation to the United States and must be paid at par. No protest," with his name and title. The day on which the collector receives the check will be considered the date of payment, so far as the taxpayer is concerned, unless the check is returned dishonored. If one check is remitted to cover two or more persons' taxes, the remittance must be accompanied by a letter of transmittal stating—

(*a*) The name of the drawer of the check;

(*b*) The amount of the check;

(*c*) The amount of any cash, money order, or other instrument included in the same remittance;

(*d*) The name of each person whose tax is to be paid by the remittance;

(*e*) The amount of the payment on account of each person; and

(*f*) The kind of tax paid. (Article 1393, Regulations 69.)

Enforcement of Liability for Taxes Collected

PAR. 26. Whenever any person is required to collect or withhold any internal-revenue tax from any other person and to pay such tax over to the United States, the amount of tax so collected or withheld shall be held to be a special fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose. (Section 607, Revenue Act of 1934.)

Common Trust Funds—National Banks

Investment of Trust Funds

PAR. 27. Funds received or held by a national bank as fiduciary shall not be invested collectively except as permitted in section 17 of this regulation. (Section 10 (c), Regulation F, Board of Gov-

ernors of Federal Reserve System, effective December 31, 1937.)

Common Trust Funds

PAR. 28. Funds received or held by a national bank as fiduciary may be invested collectively in any common trust fund established and maintained in accordance with the provisions of this section whenever the laws of the State in which the national bank is located authorize or permit such investments by State banks, trust companies, or other corporations which compete with national banks.

As used in this regulation the term "common trust fund" means a fund maintained by a national bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as trustee, executor, administrator, or guardian.

The purpose of this section is to permit the use of common trust funds, as defined in section 169 of the Revenue Act of 1936, for the investment of funds held for true fiduciary purposes; and the operation of such common trust funds as investment trusts for other than strictly fiduciary purposes is hereby prohibited. No bank administering a common trust fund shall issue any document evidencing a direct or indirect interest in such common trust fund in any form which purports to be negotiable or assignable. The trust investment committee of a bank operating a common trust fund shall not permit any funds of any trust to be invested in a common trust fund if it has reason to believe that such trust was not created or is not being used for bona fide fiduciary purposes.

Common trust funds administered under this section shall be subject to the following requirements:

(1) Assets in a common trust fund shall be considered as assets held by the bank as fiduciary;

(2) A bank administering a common trust fund shall not invest any of its own funds in such common trust fund and if a bank, because of a creditor relationship or any other reason, acquires any interest in a participation in a common trust fund under its administration the participation shall be withdrawn on the first date on which such withdrawal can be effected in accordance with the provisions of this section;

(3) A bank administering a common trust fund shall not have any interest in the assets held in such common trust fund, other than in its capacity as fiduciary, except to the extent permitted for a temporary period as provided in the immediately preceding paragraph. (Section 17 (a), Regulation F. Board of Governors of Federal Reserve System, effective December 31, 1937.)

PAR. 29. Subject to all other provisions of this regulation except subsection (c) of this section [paragraph 30], cash balances received or held by a bank in its capacity as trustee, executor, administrator, or guardian, which the bank considers to be individually too small to be invested separately to advantage may be invested, with the approval of the trust investment committee, in participations in a common trust fund, provided the total investment of the funds of any one trust in one or more such common trust funds shall not exceed $1,200. (Section 17 (b), Regulation F, Board of Governors of Federal Reserve System, effective December 31, 1937.)

PAR. 30. Subject to all other provisions of this regulation except subsection (b) of this section [paragraph 29], funds received or held by a bank in its capacity as trustee, executor, administrator, or guardian may be invested in participations in a common trust fund. All participations in such a common trust fund shall be on the basis of a proportionate interest in all of the assets of the common trust fund.

(1) *Common trust fund to be operated under written plan.*—Each common trust fund administered by a bank shall be established and maintained in accordance with a written plan (referred to herein as the plan) approved by a resolution of the bank's board of directors and approved in writing by competent legal counsel. The plan shall provide that the common trust fund shall be administered in conformity with the rules and regulations, prevailing from time to time, of the Board of Governors of the Federal Reserve System pertaining to the collective investment of trust funds by national banks, and shall contain full and detailed provisions not inconsistent with the provisions of such rules and regulations as to the manner in which the common trust fund is to be operated, including provisions relating to the investment powers of the bank with respect to the common trust fund, the allocation of income, profits and losses, the terms and conditions governing the admission or withdrawal of participations in the common trust fund, the auditing and settlement of accounts of the bank with respect to the common trust fund, the basis and method of valuing assets in the common trust fund, the basis upon which the common trust fund may be terminated, and such other matters as may be necessary to define clearly the rights of participants in the common trust fund. A copy of the plan shall be available at the principal office of the bank for inspection, during all banking hours, to any person having an interest in a trust any funds of which are invested in a participation in the common trust fund; and upon reasonable request a copy of the plan shall be furnished to such person.

(2) *Trust investment committee to approve participation.*—No funds of a trust shall be invested in a participation in a common trust fund without the approval of the trust investment committee. Before permitting any funds of any trust to be invested in a participation in a common trust fund, the trust investment committee shall review the investments comprising the common trust fund; and, if it finds that any such investment is one in which funds of such trust might not lawfully be invested at that time, funds of such trust shall not be invested in a participation in such common trust fund.

At the time of making the first investment of funds of a trust in a participation in any common trust fund, the bank shall send a notice of such investment to each person to whom an accounting ordinarily would be rendered.

(3) *Common trust fund to be audited annually.*—A bank administering a common trust fund shall, at least once during each period of 12 months, cause an audit to be made of the common trust fund by auditors responsible only to the board of directors of the bank. The report of such audit shall include a list of the investments comprising the common trust fund at the time of the audit which shall show the valuation placed on each item on such list by the trust investment committee of the bank as of the date of the audit, a statement of purchases, sales and any other investment changes and of income and disbursements since the last audit, and appropriate comments as to any investments in default as to payment of principal or interest. The reasonable expenses of any such audit made by independent public accountants may be charged to the common trust fund.

The bank shall, without charge, send a copy of the latest report of such audit annually to each person to whom an accounting of the trusts participating in the common trust fund ordinarily would be rendered or shall send advice to each such person annually that the report is available and that a copy will be furnished without charge upon request.

(4) *Value of assets to be determined periodically.*—Not less frequently than once during each period of three months the trust investment committee of a bank administering a common trust fund shall determine the value of the assets in the common trust fund. No participation shall be admitted to or withdrawn from the common trust fund except on the basis of such valuation and on the date of the determination of such valuation or, if permitted by the plan, within two business days subsequent to the date of such determination. No participation shall be admitted or withdrawn unless, in accordance with provisions of the plan, prior to the date of the determination of such valuation, notice of intention to participate or to make such withdrawal shall have been given in writing to the bank administer-

ing the common trust fund, or a written notation of the contemplated participation or withdrawal shall have been made in the records of the banks.

(5) *Miscellaneous limitations.*—No funds of any trust shall be invested in a participation in a common trust fund if such investment would result in such trust having an interest in the common trust fund in excess of 10 percent of the value of the assets of the common trust fund, as determined by the trust investment committee, or the sum of $25,000, whichever is less at the time of investment. If the bank administers more than one common trust fund, no investment shall be made which would cause the aggregate investment of funds of any one trust in all such common trust funds to exceed such limitations. In applying the limitations contained in this paragraph, if two or more trusts are created by the same settlor or settlors and as much as one-half of the income or principal or both of each trust is payable or applicable to the use of the same person or persons, such trusts shall be considered as one.

No investment for a common trust fund shall be made in stocks, or bonds or other obligations of any one person, firm, or corporation which would cause the total amount of investment in stocks, or bonds or other obligations issued or guaranteed by such person, firm, or corporation to exceed 10 percent of the value of the common trust fund, as determined by the trust investment committee, provided that this limitation shall not apply to investments in obligations of the United States or for the payment of the principal and interest of which the faith and credit of the United States shall be pledged.

No investment for a common trust fund shall be made in any one class of shares of stock of any one corporation which would cause the total number of such shares held by the common trust fund to exceed 5 percent of the number of such shares outstanding. If the bank administers more than one common trust fund no investment shall be made which would cause the aggregate investment for all such common trust funds in shares of stock of any one corporation to exceed such limitation.

Any bank administering a common trust fund shall have the responsibility of maintaining in cash and readily marketable securities such part of the assets of the common trust fund as shall be deemed by the bank to be necessary to provide adequately for the needs of participating trusts and to prevent inequities between such trusts. In any event, prior to any admissions to or withdrawals from a common trust fund, the trust investment committee shall determine what percentage of the value of the assets of a common trust fund is composed of cash and readily marketable securities; and if such committee determines that, after effecting the admissions and withdrawals which are to be made pursuant to notice given as required in subdivision (4) of this subsection, less than 40 percent of the value of the remaining assets of the common trust fund would be composed of cash and readily marketable securities, no admissions to or withdrawals from the common trust fund shall be permitted as of the valuation date upon which such determination is made, except that ratable distribution upon all participations is not prohibited.

(6) *Distribution upon withdrawal of participation.*—When participations are withdrawn from a common trust fund distributions may be made in cash or ratably in kind, or partly in cash and partly ratably in kind, provided that all distributions as of any one valuation date shall be made on the same basis. Before any distribution in cash is made, the trust investment committee shall determine whether any investment remaining in the common trust fund would be unlawful for one or more participating trusts if funds of such trusts were being invested at that time; and no distribution shall be made in cash until any such unlawful investment shall have been eliminated from the common trust fund either through sale, distribution in kind, or segregation as provided in the subdivision immediately following hereafter.

(7) *Segregation of investments.*—If for any reason an investment is withdrawn in kind from a common trust fund for the benefit of all trusts participating in the common trust fund at the time of such withdrawal and such investment is not distributed ratably in kind it shall be segregated and administered or realized upon for the benefit ratably of all trusts participating in the common trust fund at the time of withdrawal.

(8) *Management of common trust fund and fees.*—A national bank administering a common trust fund shall have the exclusive management thereof and shall not charge a fee for the management of the common trust fund, or receive, either from the common trust fund or from any trusts the funds of which are invested in participations therein, any additional fees, commissions, or compensations of any kind by reason of such participation. The bank shall not pay a fee, commission, or compensation out of the common trust fund for management. Nothing in this paragraph shall be construed as prohibiting a bank from reimbursing itself out of a common trust fund for such reasonable expenses incurred by it in the administration thereof as would have been chargeable to the respective participating trusts if incurred in the separate administration of such participating trusts.

(9) *Effect of mistakes.*—No mistake made in good faith and in the exercise of due care in connection with the administration of a common trust fund shall be deemed to be a violation of this regulation if promptly after the discovery of the mistake the bank takes whatever action may be practicable in the circumstances to remedy the mistake. (Section 17 (c), Regulation F, Board of Governors of Federal Reserve System, effective December 31, 1937.)

Compromises

Civil and Criminal Cases

PAR. 31. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, or of the Under Secretary of the Treasury, or of an Assistant Secretary of the Treasury, may compromise any civil or criminal case arising under the internal-revenue laws instead of commencing suit thereon; and, with the advice and consent of the said Secretary and the recommendation of the Attorney General, he may compromise any such case after a suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the Commissioner the opinion of the General Counsel for the Department of the Treasury, or of the officer acting as such, with his reasons therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise. (Section 3229, Revised Statutes, as amended by section 1201 of the Revenue Act of 1926; section 512 (b) of the Revenue Act of 1934; and section 815 of the Revenue Act of 1938.)

Concealment of Assets

PAR. 32. Any person who, in connection with any compromise under section 3229 of the Revised Statutes, as amended, or offer of such compromise, or in connection with any closing agreement under section 606 of this Act, or offer to enter into any such agreement, willfully (1) conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or (2) receives, destroys, multilates, or falsifies any book, document, or record, or makes under oath any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax, shall, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than one year, or both. (Section 616, Revenue Act of 1928.)

Courts—Jurisdiction

PAR. 33. (a) If any person is summoned under the internal-revenue laws to appear, to testify, or to produce books, papers or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(b) The district courts of the United States at the instance of the United States are hereby invested with such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the internal-revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws. (Section 617, Revenue Act of 1928.)

Jurisdiction of District Courts

PAR. 34. Concurrent with the Court of Claims, [the district courts shall have jurisdiction] of any suit or proceeding, commenced after the passage of the Revenue Act of 1921, for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected, under the internal-revenue laws, even if the claim exceeds $10,000, if the collector of internal revenue by whom such tax, penalty, or sum was collected is dead or is not in office as collector of internal revenue at the time such suit or proceeding is commenced. (Section 1122, Revenue Act of 1926, amending section 24, in part, United States Judicial Code.)

Deposits of United States Bonds or Notes in Lieu of Surety

PAR. 35. Wherever by the laws of the United States or regulations made pursuant thereto, any person is required to furnish any recognizance, stipulation, bond, guaranty, or undertaking, hereinafter called "penal bond," with surety or sureties, such person may, in lieu of such surety or sureties, deposit as security with the official having authority to approve such penal bond, United States Liberty bonds or other bonds or notes of the United States in a sum equal at their par value to the amount of such penal bond required to be furnished, together with an agreement authorizing such official to collect or sell such bonds or notes so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. The acceptance of such United States bonds or notes in lieu of surety or sureties required by law shall have the same force and effect as individual or corporate sureties, or certified checks, bank drafts, post-office money orders, or cash, for the penalty or amount of such penal bond. The bonds or notes deposited hereunder and such other United States bonds or notes as may be substituted therefor from time to time as such security, may be deposited with the Treasurer of the United States, a Federal reserve bank, or other depositary duly designated for that purpose by the Secretary, which shall issue receipt therefor, describing such bonds or notes so deposited. As soon as security for the performance of such penal bond is no longer necessary, such bonds or notes so deposited shall be returned to the depositor: *Provided*, That in case a person or persons supplying a contractor with labor or material as provided by the Act of Congress, approved February 24, 1905 (33 Stat. 811), entitled "An Act to amend an Act approved August thirteenth, eighteen hundred and ninety-four, entitled 'An Act for the protection of persons furnishing materials and labor for the construction of public works,' " shall file with the obligee, at any time after a default in the performance of any contract subject to said Acts, the application and affidavit therein provided, the obligee shall not deliver to the obligor the deposited bonds or notes nor any surplus proceeds thereof until the expiration of the time limited by said Acts for the institution of suit by such person or persons, and, in case suit shall be instituted within such time, shall hold said bonds or notes or proceeds subject to the order of the court having jurisdiction thereof: *Provided further*, That nothing herein contained shall affect or impair the priority of the claim of the United States against the bonds or notes deposited or any right or remedy granted by said Acts or by this section to the United States for default upon any obligation of said penal bond: *Provided, further*, That all laws inconsistent with this section are hereby so modified as to conform to the provisions hereof: *And provided further*, That nothing contained herein shall affect the authority of courts over the security, where such bonds are taken as security in judicial proceedings, or the authority of any administrative officer of the United States to receive United States bonds for security in cases authorized by existing laws. The Secretary may prescribe rules and regulations necessary and proper for carrying this section into effect. In order to avoid the frequent substitution of securities such rules and regulations may limit the effect of this section, in appropriate classes of cases, to bonds and notes of the United States maturing more than a year after the date of deposit of such bonds as security. The phrase "bonds or notes of the United States" shall be deemed, for the purposes of this section, to mean any public-debt obligations of the United States and any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States. (Section 1126, Revenue Act of 1926, as amended by the Act entitled "An Act to amend the Second Liberty Bond Act, as amended, and for other purposes", approved, February 4, 1935.)

Disclosure of Income-Tax Returns Prohibited

PAR. 36. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment. (Section 3167, Revised Statutes, as reenacted by section 1115, Revenue Act of 1926.)

Examination of Books and Witnesses

PAR. 37. The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons. (Section 1104, Revenue Act of 1926, as amended by section 618, Revenue Act of 1928.)

Tranferees

PAR. 38. The Commissioner, for the purpose of determining the liability at law or in equity of a transferee of the property of any person with respect to any Federal taxes imposed upon such person, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon such liability, and may require the attendance of the transferor or transferee, or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his

testimony with reference to the matter, with power to administer oaths to such person or persons. (Section 507, Revenue Act of 1934.)

Unnecessary Examinations

PAR. 39. No taxpayer shall be subjected to unnecessary examinations or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the Commissioner, after investigation, notifies the taxpayer in writing that an additional inspection is necessary. (Section 1105, Revenue Act of 1926.)

Informers

General

PAR. 40. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to pay such sums, not exceeding in the aggregate the sum appropriated therefor, as he may deem necessary for detecting and bringing to trial and punishment persons guilty of violating the internal-revenue laws, or conniving at the same, in cases where such expenses are not otherwise provided for by law. (Section 3463, Revised Statutes.)

Income From Illegally Produced Petroleum

PAR. 41. (a) Any person liable for tax on any income from illegally produced petroleum, who willfully fails to make return showing such income within the time prescribed by law or 30 days after the enactment of this Act, whichever expires later, shall, in addition to all other penalties prescribed by law, be liable to a civil penalty of $500 plus $50 for each day during which such failure continues.

(b) Any person not an officer or employee of the United States who furnishes to the Commissioner or any collector original information leading to the recovery from any other person of any penalty under this section may be awarded and paid by the Commissioner a compensation of one-half the penalty so recovered, as determined by the Commissioner.

(c) As used in this section, the term "income from illegally produced petroleum" means any income (not shown on a return made within the time prescribed by law or 30 days after the enactment of this Act, whichever expires later) arising out of any sale or purchase of crude petroleum withdrawn from the ground subsequent to January 1, 1932, in violation of any State or Federal law (not including withdrawal in violation of any code of fair competition approved under the National Industrial Recovery Act or illegal withdrawal the penalties for which have been mitigated or satisfied in pursuance of law prior to the enactment of this Act), or arising out of any fee derived from acting as agent for any seller or purchaser in connection with a sale or purchase of such petroleum or products thereof, or any amount illegally received by any person charged with the enforcement of law with respect to such petroleum or products thereof. (Section 514, Revenue Act of 1934.)

Interest

Overpayments

PAR. 42. (a) Interest shall be allowed and paid upon any overpayment in respect of any internal-revenue tax, at the rate of 6 per centum per annum, as follows:

(1) In the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment of a tax imposed by the Revenue Act of 1921 or any subsequent revenue Act, then to the date of the assessment of that amount.

(2) In the case of a refund, from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days, such date to be determined by the Commissioner, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(b) As used in this section the term "additional assessment" means a further assessment for a tax of the same character previously paid in part, and includes the assessment of a deficiency of any income or estate tax imposed by the Revenue Act of 1924 or by any subsequent revenue Act.

(c) Section 1116 of the Revenue Act of 1926 is repealed.

(d) Subsections (a), (b), and (c) shall take effect on the expiration of thirty days after the enactment of this Act, and shall be applicable to any credit taken or refund paid after the expiration of such period, even though allowed prior thereto. (Section 614, Revenue Act of 1928, as amended by section 804, Revenue Act of 1936.)

Judgments

PAR. 43. (b) In any judgment of any court rendered (whether against the United States, a collector or deputy collector of internal revenue, a former collector or deputy collector, or the personal representative in case of death) for any overpayment in respect of any internal-revenue tax, interest shall be allowed at the rate of 6 per centum per annum upon the amount of the overpayment, from the date of the payment or collection thereof to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue. The Commissioner is hereby authorized to tender by check payment of any such judgment, with interest as herein provided, at any time after such judgment becomes final, whether or not a claim for such payment has been duly filed, and such tender shall stop the running of interest, whether or not such refund check is accepted by the judgment creditor. (Section 177 (b) of the Judicial Code, as amended by section 808, Revenue Act of 1936.)

Delinquent Taxes

PAR. 44. Notwithstanding any provision of law to the contrary, interest accruing during any period of time after the date of the enactment of this Act upon any internal-revenue tax (including amounts assessed or collected as a part thereof) or customs duty, not paid when due, shall be at the rate of 6 per centum per annum. (Section 404, Revenue Act of 1935.)

Joint-Stock Land Banks, Income From Obligations and Mortgages Issued by

PAR. 45. Notwithstanding the provisions of section 26 of the Federal Farm Loan Act, as amended, in the case of mortgages made or obligations issued by any joint-stock land bank after the date of the enactment of this Act, all income, except interest, derived therefrom shall be included in gross income and shall not be exempt from Federal income taxation. (Section 817, Revenue Act of 1938.)

Liens for Taxes

PAR. 46. (a) If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(b) Such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) in accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; or

(2) in the office of the clerk of the United States District Court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or

(3) in the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(c) Subject to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe, the collector of internal revenue charged with an assessment in respect of any tax—

(1) May issue a certificate of release of the lien if the collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable;

(2) May issue a certificate of release of the lien if there is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations;

(3) May issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon such property.

(4) May issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United State.

(d) A certificate of release or of partial discharge issued under this section shall be held conclusive that the lien upon the property covered by the certificate is extinguished.

(e) The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation provide for the acceptance of a single bond complying both with the requirements of section 272 (j) of the Revenue Act of 1928 (relating to the extension of time for the payment of a deficiency), or of any similar provisions of any prior law, and the requirements of subsection (c) of this section.

(f) Subsections (c), (d), and (e) of this section shall apply to a lien in respect of any internal-revenue tax, whether or not the lien is imposed by this section. (Section 3186, Revised Statutes, as amended, and further amended by section 613, Revenue Act of 1928, by section 509, Revenue Act of 1934, and by the Act of June 25, 1936, chapter 804, 49 Stat. 1921.)

Priority of Debts Due United States

PAR. 47. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed. (Section 3466, Revised Statutes.)

PAR. 48. Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate from whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid. (Section 3467, Revised Statutes, as amended by section 518, Revenue Act of 1934.)

Limitation

Effect of Expiration of Period of Limitation Against Taxpayer

PAR. 49. A refund of any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) made after the enactment of this Act, shall be considered erroneous—

(a) if made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed; or

(b) in the case of a claim filed within the proper time and disallowed by the Commissioner after the enactment of this Act, if the refund was made after the expiration of the period of limitation for filing suit, unless—

(1) within such period suit was begun by the taxpayer, or

(2) within such period, the taxpayer and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of final decision in one or more named cases then pending before the United States Board of Tax Appeals or the courts. If such agreement has been entered into, the running of such statute of limitations shall be suspended in accordance with the terms of the agreement. (Section 608, Revenue Act of 1928, as amended by section 503, Revenue Act of 1934.)

Effect of Expiration Period of Limitation Against United States

PAR. 50. Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid (whether before or after the enactment of this Act) after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim. (Section 607, Revenue Act of 1928.)

Prosecutions for Internal Revenue Offenses

PAR. 51. (a) The Act entitled "An Act to limit the time within which prosecutions may be instituted against persons charged with violating internal revenue laws," approved July 5, 1884, as amended, and as reenacted by section 1110 of the Revenue Act of 1926, is amended to read as follows:

That no person shall be prosecuted, tried, or punished, for any of the various offenses arising under the internal revenue laws of the United States unless the indictment is found or the information instituted within three years next after the commission of the offense, except that the period of limitation shall be six years—

(1) for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner,

(2) for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof, and

(3) for the offense of willfully aiding or assisting in, or procuring, counselling, or advising, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document).

For offenses arising under section 37 of the Criminal Code, where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof, the period of limitation shall also be six years. The time during which the person committing any of the offenses above mentioned is absent from the district wherein the same is committed shall not be taken as any part of the time limited by law for the commencement of such proceedings. Where a complaint is instituted before a commissioner of the United States within the period above limited, the time shall be extended until the discharge of the grand jury at its next session within the district.

(b) The amendment made by subsection (a) of this section shall apply to offenses whenever committed; except that it shall not apply to offenses the prosecution of which was barred before the date of the enactment of this Act. (Section 1108, Revenue Act of 1932.)

Oaths or Affirmations

PAR. 52. Any oath or affirmation required or authorized by any internal-revenue law or by any regulations made under authority thereof may be admin-

istered by any person authorized to administer oaths for general purposes by the law of the United States, or of any State, Territory, or possession of the United States, or of the District of Columbia, wherein such oath or affirmation is administered. This section shall not be construed as an exclusive enumeration of the persons who may administer such oaths or affirmations. (Section 806, Revenue Act of 1938.)

Penalties

PAR. 53. (c) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(e) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

(f) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. (Section 1114, in part, Revenue Act of 1926.)

Penalty for False Claim

PAR. 54. Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder; * * * or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; * * * shall be fined not more than $10,000 or imprisoned not more than ten years, or both. * * * (Section 35, Criminal Code of the United States, as amended by the Act approved April 4, 1938, Public, No. 465, Seventy-fifth Congress.)

Failure to File Returns

PAR. 55. In the case of a failure to make and file an internal-revenue tax return required by law, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, if the last date so prescribed for filing the return is after the date of the enactment of this Act, if a 25 per centum addition to the tax is prescribed by existing law, then there shall be added to the tax, in lieu of such 25 per centum: 5 per centum if the failure is for not more than 30 days, with an additional 5 per centum for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per centum in the aggregate. (Section 406, Revenue Act of 1935.)

Priority of Consideration—Income Tax

PAR. 56. If, upon application of any taxpayer, it be shown to the satisfaction of the Commissioner (1) that the taxpayer is in the hands of a receiver and a reorganization is necessary; (2) that the taxpayer is in financial difficulties, either actual or imminent, and refinancing is necessary; or (3) that the distribution of a fund in which a large number of people may be interested is held up pending the determination of the amount of income or profit taxes which must be paid out of the fund—then the Commissioner will declare an emergency to exist with reference to such case and will direct that the matter be given priority of consideration with a view to the expeditious determination of the particular tax liability.

Application for such priority of consideration shall be in the form of a letter addressed to the Commissioner and shall be supported by statements under oath setting forth in detail the facts upon which the request for special consideration is based, and the particular reason why such person believes himself entitled to have the case expedited as provided herein. (Treasury Decision 3329, approved May 13, 1922.)

Refund or Credit

Assignment of Claim Void Before Allowance

PAR. 57. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interests therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgment of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same. (Section 3477, Revised Statutes.)

Erroneous Credits

PAR. 58. (a) *Credit against barred deficiency.*—Any credit against a liability in respect of any taxable year shall be void if any payment in respect of such liability would be considered an overpayment under section 607.

(b) *Credit of barred overpayment.*—A credit of an overpayment in respect of any tax shall be void if a refund of such overpayment would be considered erroneous under section 608.

(c) *Application of section.*—The provisions of this section shall apply to any credit made before or after the enactment of this Act. (Section 609, Revenue Act of 1928.)

Effect of Expiration Period of Limitation Against United States

PAR. 59. Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid (whether before or after the enactment of this Act) after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim. (Section 607, Revenue Act of 1928.)

Recovery of Amounts Erroneously Refunded

PAR. 60. (a) Any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) refund of which is erroneously made, within the meaning of section 608, after the enactment of this Act,

may be recovered by suit brought in the name of the United States, but only if such suit is begun within two years after the making of such refund.

(b) Any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) which has been erroneously refunded (if such refund would not be considered as erroneous under section 608) may be recovered by suit brought in the name of the United States, but only if such suit is begun before the expiration of two years after the making of such refund or before May 1, 1928, whichever date is later.

(c) Despite the provisions of subsections (a) and (b) such suit may be brought at any time within five years from the making of the refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact.

(d) Erroneous refunds recoverable by suit under this section shall bear interest at the rate of 6 per centum per annum from the date of the payment of the refund. (Section 610, Revenue Act of 1928, as amended, subsection (c) added by section 502, Revenue Act of 1934, subsection (d) added by section 803, Revenue Act of 1936.)

Suit May Not Be Brought Unless Claim Is Filed; Limitation

PAR. 61. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates. Any consideration, reconsideration, or action by the Commissioner with respect to such claim following the mailing of a notice by registered mail of disallowance shall not operate to extend the period within which suit may be begun. (Section 3226, Revised Statutes, as amended by section 1103, Revenue Act of 1932, and as amended by section 807, Revenue Act of 1936.)

Regulations

Retroactive Regulations

PAR. 62. (a) The Secretary, or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal-revenue laws, shall be applied without retroactive effect. (Section 1108, Revenue Act of 1926, as amended by section 605, Revenue Act of 1928, and by section 506, Revenue Act of 1934.)

When Law Is Changed

PAR. 63. *Regulations when law is changed.*—The Commissioner may make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue. (Section 3447, Revised Statutes; United States Code, Title 26, section 1691 (2).)

Reserve Requirements of Holding Company Affiliates of Banks

PAR. 64. (b) After five years after the enactment of the Banking Act of 1933, every such holding company affiliate (1) shall possess, and shall continue to possess during the life of such permit, free and clear of any lien, pledge, or hypothecation of any nature, readily marketable assets other than bank stock in an amount not less than 12 per centum of the aggregate par value of all bank stocks controlled by such holding company affiliate, which amount shall be increased by not less than 2 per centum per annum of such aggregate par value until such assets shall amount to 25 per centum of the aggregate par value of such bank stocks; and (2) shall reinvest in readily marketable assets other than bank stock all net earnings over and above 6 per centum per annum on the book value of its own shares outstanding until such assets shall amount to such 25 per centum of the aggregate par value of all bank stocks controlled by it;

(c) Notwithstanding the foregoing provisions of this section, after five years after the enactment of the Banking Act of 1933, (1) any such holding company affiliate the shareholders or members of which shall be individually and severally liable in proportion to the number of shares of such holding company affiliate held by them respectively, in addition to amounts invested therein, for all statutory liability imposed on such holding company affiliate by reason of its control of shares of stock of banks, shall be required only to establish and maintain out of net earnings over and above 6 per centum per annum on the book value of its own shares outstanding a reserve of readily marketable assets in an amount of not less than 12 per centum of the aggregate par value of bank stocks controlled by it, and (2) the assets required by this section to be possessed by such holding company affiliate may be used by it for replacement of capital in banks affiliated with it and for losses incurred in such banks, but any deficiency in such assets resulting from such use shall be made up within such period as the Federal Reserve Board may by regulation prescribe; and the provisions of this subsection, instead of subsection (b), shall apply to all holding company affiliates with respect to any shares of bank stock owned or controlled by them as to which there is no statutory liability imposed upon the holders of such bank stock. (Section 5144 (b) and (c) of the Revised Statutes as amended by section 19 of the Banking Act of 1933 and by section 311 of the Banking Act of 1935.)

Returns

Failure to Make; Procedure; Penalties

PAR. 65. If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner of Internal Revenue may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes.

If the failure to file a return (other than a return of income tax) or a list is due to sickness or absence, the collector may allow such further time, not exceeding 30 days, for making and filing the return or list as he deems proper.

The Commissioner of Internal Revenue shall determine and assess all taxes, other than stamp taxes, as to which returns or lists are so made under the provisions of this section. In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so

added shall be collected in the same manner as the tax. (Section 3176, Revised Statutes, as amended by section 1103, Revenue Act of 1926, and by section 619, Revenue Act of 1928.)

Notice and Summons

PAR. 66. It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, (1) in case of a special tax, on or before the thirty-first day of July in each year, and (2) in other cases before the day on which the taxes accrue, to make a list or return, verified by oath, to the collector or a deputy collector of the district where located, of the articles or objects, including the quantity of goods, wares, and merchandise, made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided*, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, article or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided further*, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is erroneous, false, or fraudulent, or contains any undervaluation or understatement, or refuses to allow any regularly authorized Government officer to examine the books of such person, firm, or corporation, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person or any other person he may deem proper, to appear before him and produce such books at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects or income liable to tax or the returns thereof. The collector may summon any person residing or found within the State or Territory in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State or Territory, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned: *Provided*, That "person," as used in this section, shall be construed to include any corporation, joint-stock company or association, or insurance company when such construction is necessary to carry out its provisions. (Section 3173, Revised Statutes, as reenacted by section 1115, Revenue Act of 1926.)

Public Records

PAR. 67. (a) Returns upon which the tax has been determined by the Commissioner shall constitute public records; but, except as hereinafter provided in this section and section 1203, they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary and approved by the President. Whenever a return is open to the inspection of any person a certified copy thereof shall, upon request, be furnished to such person under rules and regulations prescribed by the Commissioner with the approval of the Secretary. The Commissioner may prescribe a reasonable fee for furnishing such copy.

(b) (1) The Secretary and any officer or employee of the Treasury Department, upon request from the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, or a select committee of the Senate or House specially authorized to investigate returns by a resolution of the Senate or House, or a joint committee so authorized by concurrent resolution, shall furnish such committee sitting in executive session with any data of any character contained in or shown by any return.

(2) Any such committee shall have the right, acting directly as a committee, or by or through such examiners or agents as it may designate or appoint, to inspect any or all of the returns at such times and in such manner as it may determine.

(3) Any relevant or useful information thus obtained may be submitted by the committee obtaining it to the Senate or the House, or to both the Senate and the House, as the case may be.

(c) The proper officers of any State may, upon the request of the governor thereof, have access to the returns of any corporation, or to an abstract thereof showing the name and income of the corporation, at such times and in such manner as the Secretary may prescribe.

(d) All bona fide shareholders of record owning 1 per centum or more of the outstanding stock of any corporation shall, upon making request of the Commissioner, be allowed to examine the annual income returns of such corporation and of its subsidiaries. Any shareholder who pursuant to the provisions of this section is allowed to examine the return of any corporation, and who makes known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such return, shall be guilty of a misdemeanor and be punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both.

(e) The Commissioner shall as soon as practicable in each year cause to be prepared and made available to public inspection in such manner as he may determine, in the office of the collector in each internal-revenue district and in such other places as he may determine, lists containing the name and the post-office address of each person making an income-tax return in such district. (Section 257, Revenue Act of 1926.)

Suits to Restrain Assessment or Collection

PAR. 68. No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court. (Section 3224, Revised Statutes.)

Suits to Restrain Enforcement of Tax Liability

Declaratory Judgments

PAR. 69. (1) In cases of actual controversy (except with respect to Federal taxes) the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such. (Section 274D (1) of the Judicial Code as added by the Act of June 14, 1934, 48 Stat. 955, and amended by section 405, Revenue Act of 1935.)

NOTE.—The parenthetical phrase "(except with respect to Federal taxes)" in the foregoing paragraph, which was inserted by section 405 of the Revenue Act of 1935, applies to any proceeding which was pending in any court of the United States on August 30, 1935.

Transferee or Fiduciary

PAR. 70. No suit shall be maintained in any court for the purpose of restraining the assessment or collection of (1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any income, war-profits, excess-profits, or estate tax, or (2) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes in respect of any such tax. (Section 604, Revenue Act of 1928.)

Tax on Transfers To Avoid Income Tax

PAR. 71. There shall be imposed upon the transfer of stock or securities by a citizen or resident of the United States, or by a domestic corporation or partnership, or by a trust which is not a foreign trust, to a foreign corporation as paid-in surplus or as a contribution to capital, or to a foreign trust, or to a foreign partnership, an excise tax equal to 25 per centum of the excess of (1) the value of the stock or securities so transferred over (2) its adjusted basis in the hands of the transferor as determined under section 113 of this Act. (Section 901, Revenue Act of 1932.)

PAR. 72. The tax imposed by section 901 shall not apply—

(a) if the transferee is an organization exempt from income tax under section 103 of this Act; or

(b) if prior to the transfer it has been established to the satisfaction of the Commissioner that such transfer is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes. (Section 902, Revenue Act of 1932.)

PAR. 73. A trust shall be considered a foreign trust within the meaning of this title if, assuming a subsequent sale by the trustee, outside the United States and for cash, of the property so transferred, the profit, if any, from such sale would not be included in the gross income of the trust under Title I of this Act. (Section 903, Revenue Act of 1932.)

PAR. 74. (a) The tax imposed by section 901 shall, without assessment or notice and demand, be due and payable by the transferor at the time of the transfer, and shall be assessed, collected, and paid under regulations prescribed by the Commissioner with the approval of the Secretary.

(b) Under regulations prescribed by the Commissioner with the approval of the Secretary the tax may be abated, remitted, or refunded if after the transfer it has been established to the satisfaction of the Commissioner that such transfer was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes.

(c) All administrative, special, or stamp provisions of law, including penalties and including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this title. (Section 904, Revenue Act of 1932.)

PAR. 75. Section 901 imposes an excise tax upon transfers of stock or securities made after the enactment of the Act (5 p. m., eastern standard time, June 6, 1932), by a citizen or resident of the United States, or by a domestic corporation or partnership, or by a trust which is not a foreign trust, to a foreign corporation as paid-in surplus or as a contribution to capital, or to a foreign trust, or to a foreign partnership. The tax is in an amount equal to 25 per cent of the excess of the fair market value of the stock or securities at the time of the transfer over the cost or other basis of the stock or securities provided in section 113 (a), adjusted as provided in section 113 (b).

The tax imposed by section 901 does not apply—

(*a*) if the transferee is an organization exempt from income tax under section 103; or

(*b*) if prior to the transfer it has been established to the satisfaction of the Commissioner that the transfer is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes.

Whether a transfer of stock or securities is in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes is a question to be determined from the facts and circumstances of each particular case. In any such case where a taxpayer desires to establish that the transfer is not in pursuance of such a plan, a statement under oath, of the facts relating to the plan under which the transfer is to be made or was made, together with a copy of the plan if in writing, shall be forwarded to the Commissioner of Internal Revenue, Washington, D. C., for a ruling. A letter notifying the taxpayer of the Commissioner's determination will be mailed to the taxpayer.

Every person making a transfer described in section 901 shall make a return, under oath, to the collector of internal revenue on the day on which the transfer is made and, unless the transfer is nontaxable under section 902, pay the tax due on such transfer. The return shall be made on Form 926 and shall be filed with the collector for the district with whom a Federal income tax return would be filed. The return shall set forth in detail the following information:

(1) Name and address of transferor, and place of organization or creation, if a corporation, partnership, or trust.

(2) Name and address of transferee, place of organization or creation, and whether the transferee is a foreign corporation, a foreign trust, or a foreign partnership. If the transferee is a foreign trust or a foreign partnership the name and address of the fiduciary and each beneficiary, in the case of a trust, or of each partner, in the case of a partnership, must be shown.

(3) Description and amount of stock or securities transferred, the date of transfer, and a complete statement showing all the facts relating to the transfer, accompanied by a copy of the plan under which the transfer was made.

(4) The fair market value of the stock or securities transferred as of the date of transfer, and the cost or other basis thereof in the hands of the transferor determined and adjusted in accordance with section 113.

(5) Whether the transfer was made in pursuance of a plan submitted to and approved by the Commissioner of Internal Revenue as not having as one of its principal purposes the avoidance of Federal income taxes. If the plan has been so approved, a copy of the Commissioner's letter approving the plan should accompany the return.

(6) Such other information as may be required by the return form.

If the transferee of the stock or securities, the transfer of which is reported in the return, is a foreign organization meeting the tests of exemption from income tax provided in section 103, and the taxpayer on that account claims that no liability for tax is imposed by section 901, he must file an affidavit establishing the exemption of the transferee under section 103. This affidavit should accompany the return and should contain complete information showing the character of the transferee, the purpose for which it was organized, its actual activities, the source of its income and its disposition, whether or not any of its income is credited to surplus or may inure to the benefit of any private shareholder or individual, and in general all facts relating to its operations which affect its right to exemption. To such affidavit should be attached a copy of the charter or articles of incorporation, the by-laws of the organization, and the latest financial statement, showing the assets, liabilities, receipts, and disbursements of the organization.

A trust is to be considered a "foreign trust" within the meaning of Title VII if, assuming a subsequent sale by the trustee, outside the United States and for cash, of the property transferred to the trust, the profit, if any, from such sale (being income from sources without the United States) would not be included in the gross income of the trust under Title I. A domestic corporation or partnership is one organized or created in the United States, including only the States, the Territories of Alaska and Hawaii, and the District of Columbia, or under the law of the United States or of any State or Territory; and a foreign corporation or partnership is one which is not domestic.

The determination, assessment, and collection of the tax and the examination of returns and claims filed pursuant

to Title VII and this article will be made under such procedure as may be prescribed from time to time by the Commissioner. (Article 1281, Regulations 77.)

Bankruptcy Proceedings—Cancellation of Indebtedness

[Sections 268–270; 276c in part; 395, 396, 399 (4); 520–522, 526; 679, 686; Bankruptcy Act of 1898, as amended by the Act of June 22, 1938 (Public, No. 696, Seventy-fifth Congress)]

Except as provided in section 270 of this Act, no income or profit, taxable under any law of the United States or of any State now in force or which may hereafter be enacted, shall, in respect to the adjustment of the indebtedness of a debtor in a proceeding under this chapter, be deemed to have accrued to or to have been realized by a debtor, by a trustee provided for in a plan under this chapter, or by a corporation organized or made use of for effectuating a plan under this chapter by reason of a modification in or cancellation in whole or in part of any of the indebtedness of the debtor in a proceeding under this chapter. (Section 268, Bankruptcy Act of 1898, as amended by the Act of June 22, 1938, Public, No. 696, Seventy-fifth Congress.)

Where it appears that a plan has for one of its principal purposes the avoidance of taxes, objection to its confirmation may be made on that ground by the Secretary of the Treasury, or, in the case of a State, by the corresponding official or other person so authorized. Such objections shall be heard and determined by the judge, independently of other objections which may be made to the confirmation of the plan, and, if the judge shall be satisfied that such purpose exists, he shall refuse to confirm the plan. (Section 269, Bankruptcy Act of 1898, as amended by the Act of June 22, 1938, Public, No. 696, Seventy-fifth Congress.)

In determining the basis of property for any purposes of any law of the United States or of a State imposing a tax upon income, the basis of the debtor's property (other than money) or of such property (other than money) as is transferred to any person required to use the debtor's basis in whole or in part shall be decreased by an amount equal to the amount by which the indebtedness of the debtor, not including accrued interest unpaid and not resulting in a tax benefit on any income tax return, has been canceled or reduced in a proceeding under this chapter. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe such regulations as he may deem necessary in order to reflect such decrease in basis for Federal income tax purposes and otherwise carry into effect the purposes of this section. (Section 270, Bankruptcy Act of 1898, as amended by the Act of June 22, 1938, Public, No. 696, Seventy-fifth Congress.)

The provisions of sections 77A and 77B of Chapter VIII, as amended, of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, shall continue in full force and effect with respect to proceedings pending under those sections upon the effective date of this amendatory Act, except that—

* * * * *

(3) sections 268 and 270 of this Act shall apply to any plan confirmed under section 77B before the effective date of this amendatory Act and to any plan which may be confirmed under section 77B on and after such effective date, except that the exemption provided by section 268 of this Act may be disallowed if it shall be made to appear that any such plan had for one of its principal purposes the avoidance of income taxes, and except further that where such plan has not been confirmed on and after such effective date, section 269 of this Act shall apply where practicable and expedient. (Section 276c, in part, Bankruptcy Act of 1898, as amended by the Act of June 22, 1938, Public, No. 696, Seventy-fifth Congress.)

Except as provided in section 396 of this Act, no income or profit, taxable under any law of the United States or of any State now in force or which may hereafter be enacted, shall, in respect to the adjustment of the indebtedness of a debtor in a proceeding under this chapter, be deemed to have accrued to or to have been realized by a debtor or a corporation organized or made use of for effecuating an arrangement under this chapter by reason of a modification in or cancellation in whole or in part of any such indebtedness in a proceeding under this chapter: *Provided, however,* That if it shall be made to appear that the arrangement had for one of its principal purposes the evasion of any income tax, the exemption provided by this section shall be disallowed. (Section 395, Bankruptcy Act of 1898, as amended by the Act of June 22, 1938, Public, No. 696, Seventy-fifth Congress.)

In determining the basis of property for any purposes of any law of the United States or of a State imposing a tax upon income, the basis of the debtor's property (other than money) or of such property (other than money) as is transferred to any person required to use the debtor's basis in whole or in part shall be decreased by an amount equal to the amount by which the indebtedness of the debtor, not including accrued interest unpaid and not resulting in a tax benefit on any income tax return, has been cancelled or reduced in a proceeding under this chapter. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe such regulations as he may deem necessary in order to reflect such decrease in basis for Federal income tax purposes and otherwise carry into effect the purposes of this section. (Section 396, Bankruptcy Act of 1898, as amended by the Act of June 22, 1938, Public, No. 696, Seventy-fifth Congress.)

Sections 395 and 396 of this Act shall apply to compositions and extensions confirmed under sections 12 and 74 before the effective date of this amendatory Act and to compositions and extensions which may be confirmed under sections 12 and 74 on and after such effective date. (Section 399 (4), Bankruptcy Act of 1898, as amended by the Act of June 22, 1938, Public, No. 696, Seventy-fifth Congress.)

Except as provided in section 522 of this Act, no income or profit, taxable under any law of the United States or of any State now in force or which may hereafter be enacted, shall, in respect to the adjustment of the indebtedness of a debtor in a proceeding under this chapter, be deemed to have accrued to or to have been realized by a debtor, by a trustee provided for in an arrangement under this chapter, or by a corporation organized or made use of for effectuating an arrangement under this chapter by reason of a modification in or cancellation in whole or in part of any of the indebtedness of the debtor in an arrangement consummated under this chapter. (Section 520, Bankruptcy Act of 1898, as amended by the Act of June 22, 1938, Public, No. 696, Seventy-fifth Congress.)

Where it appears that an arrangement has for one of its principal purposes the evasion of taxes, objection to its confirmation may be made on that ground by the Secretary of the Treasury or, in the case of a State, by the corresponding official or other person so authorized. Such objections shall be heard and determined by the judge, independently of other objections which may be made to the confirmation of the arrangement, and, if the judge shall be satisfied that such purpose exists, he shall refuse to confirm the arrangement. (Section 521, Bankruptcy Act of 1898, as amended by the Act of June 22, 1938, Public, No. 696, Seventy-fifth Congress.)

In determining the basis of property for any purposes of any law of the United States or of a State imposing a tax upon income, the basis of the debtor's property (other than money) or of such property (other than money) as is transferred to any person required to use the debtor's basis in whole or in part shall be decreased by an amount equal to the amount by which the indebtedness of the debtor, not including accrued interest unpaid and not resulting in a tax benefit on any income tax return, has been cancelled or reduced in a proceeding under this chapter. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe such regulations as

he may deem necessary in order to reflect such decrease in basis for Federal income tax purposes and otherwise carry into effect the purposes of this section. (Section 522, Bankruptcy Act of 1898, as amended by the Act of June 22, 1938, Public, No. 696, Seventy-fifth Congress.)

Sections 520 and 522 of this Act shall apply to compositions and extensions confirmed under section 74 before the effective date of this amendatory Act and to compositions and extensions which may be confirmed under section 74 on and after such effective date, except that the exemption provided by section 520 of this Act may be disallowed if it shall be made to appear that such composition or extension, or composition and extension, had for one of its principal purposes the avoidance of income taxes, and except further that where such composition or extension, or composition and extension, has not been confirmed on or after such effective date, section 521 of this Act shall apply where practicable and expedient. (Section 526 (4), Bankruptcy Act of 1898, as amended by the Act of June 22, 1938, Public, No. 696, Seventy-fifth Congress.)

No income or profit, taxable under any law of the United States or of any State now in force or which may hereafter be enacted, shall, in respect to the adjustment of the indebtedness of a debtor in a proceeding under this chapter, be deemed to have accrued to or to have been realized by a debtor by reason of a modification in or cancellation in whole or in part of any such indebtedness in a proceeding under this chapter: *Provided, however*, That if it shall be made to appear that the plan had for one of its principal purposes the evasion of any income tax, the exemption provided by this section shall be disallowed. (Section 679, Bankruptcy Act of 1898, as amended by the Act of June 22, 1938, Public, No. 696, Seventy-fifth Congress.)

Section 679 of this Act shall apply to compositions and extensions confirmed under section 74 before the effective date of this amendatory Act and to compositions and extensions which may be confirmed under section 74 on and after such effective date; (Section 686 (4), Bankruptcy Act of 1898, as amended by the Act of June 22, 1938, Public, No. 696, Seventy-fifth Congress.)

Canadian Citizens and Corporations, Taxation of

Treasury Decision 4883—Income Tax

Regulations with respect to the taxation of nonresident alien individuals and foreign corporations not engaged in trade or business within the United States and not having an office or place of business therein as affected by the reciprocal tax convention between the United States and Canada, effective January 1, 1936.

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH A. The reciprocal tax convention between the United States and Canada which was ratified August 13, 1937, provides as follows:

"ARTICLE I

"The high contracting parties mutually agree that the income taxation imposed in the two States shall be subject to the following reciprocal provisions:

"(*a*) The rate of income tax imposed by one of the contracting States, in respect of income derived from sources therein, upon individuals residing in the other State, who are not engaged in trade or business in the taxing State and have no office or place of business therein, shall not exceed 5 per centum for each taxable year, so long as an equivalent or lower rate of income taxation is imposed by the other State upon individuals residing in the former State who are not engaged in trade or business in such other State and do not have an office or place of business therein.

"(*b*) The rate of income tax imposed by one of the contracting States, in respect of dividends derived from sources therein, upon nonresident foreign corporations organized under the laws of the other State, which are not engaged in trade or business in the taxing State and have no office or place of business therein, shall not exceed 5 per centum for each taxable year, so long as an equivalent or lower rate of income taxation on dividends is imposed by the other State upon corporations organized under the laws of the former State which are not engaged in trade or business in such other State and do not have an office or place of business therein.

"(*c*) Either State shall be at liberty to increase the rate of taxation prescribed by paragraphs (*a*) and (*b*) of this article, and in such case the other State shall be released from the requirements of the said paragraphs (*a*) and (*b*).

"(*d*) Effect shall be given to the foregoing provisions by both States as and from the 1st day of January, 1936.

"ARTICLE II

"The provisions of this convention shall not apply to citizens of the United States of America domiciled or resident in Canada.

"ARTICLE III

"This convention shall be ratified and shall take effect immediately upon the exchange of ratifications which shall take place at Washington as soon as possible.

"Signed, in duplicate, at Washington by the duly authorized representatives of Canada and the United States of America, this 30th day of December, in the year of our Lord, one thousand nine hundred and thirty-six."

PAR. B. Section 211 of the Revenue Act of 1938 provides:

SEC. 211. *Tax on nonresident alien individuals.*—(a) *No United States business or office.*—(1) *General rule.*—There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by sections 11 and 12, upon the amount received, by every nonresident alien individual not engaged in trade or business within the United States and not having an office or place of business therein, from sources within the United States as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, a tax of 10 per centum of such amount, except that such rate shall be reduced, in the case of a resident of a contiguous country, to such rate (not less than 5 per centum) as may be provided by treaty with such country. For inclusion in computation of tax of amount specified in shareholder's consent, see section 28.

(2) *Aggregate more than $21,600.*—The tax imposed by paragraph (1) shall not apply to any individual if the aggregate amount received during the taxable year from the sources therein specified is more than $21,600.

(3) *Residents of contiguous countries.*—Despite the provisions of paragraph (2), the provisions of paragraph (1) shall apply to a resident of a contiguous country so long as there is in effect a treaty with such country (ratified prior to August 26, 1937) under which the rate of tax under section 211 (a) of the Revenue Act of 1936, prior to its amendment by section 501 (a) of the Revenue Act of 1937, was reduced.

* * * * *

(c) *No United States business or office and gross income of more than $21,600.*—A nonresident alien individual not engaged in trade or business within the United States and not having an office or place of business therein who has a gross income for any taxable year of more than $21,600 from the sources specified in subsection (a) (1), shall be taxable without regard to the provisions of subsection (a) (1), except that—

(1) The gross income shall include only income from the sources specified in subsection (a) (1);

(2) The deductions (other than the so-called "charitable deduction" provided in section 213 (c)) shall be allowed only if and to the extent that they are properly allocable to the gross income from the sources specified in subsection (a) (1);

(3) The aggregate of the normal tax and surtax under sections 11 and 12 shall, in no case, be less than 10 per centum of the gross income from the sources specified in subsection (a) (1); and

(4) This subsection shall not apply to a resident of a contiguous country so long as there is in effect a treaty with such country (ratified prior to August 26, 1937) under which the rate of tax under section 211 (a) of the Revenue Act of 1936, prior to its amendment by section 501 (a) of the Revenue Act of 1937, was reduced.

PAR. C. Section 231 (a) of the Revenue Act of 1938 provides:

Nonresident corporations.—There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by sections 13 and 14, upon the amount received by every foreign corporation not engaged in trade or business within the United States and not having an office or place of business therein, from sources within the United States as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, com-

pensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, a tax of 15 per centum of such amount, except that in the case of dividends the rate shall be 10 per centum, and except that in the case of corporations organized under the laws of a contiguous country such rate of 10 per centum with respect to dividends shall be reduced to such rate (not less than 5 per centum) as may be provided by treaty with such country. For inclusion in computation of tax of amount specified in shareholder's consent, see section 28.

PAR. D. Section 143 (a) of the Revenue Act of 1938 provides in part:

Tax-free covenant bonds.—(1) *Requirement of withholding.*—In any case where bonds, mortgages, or deeds of trust, or other similar obligations of a corporation, issued before January 1, 1934, contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed by this title upon the obligee, or to reimburse the obligee for any portion of the tax, or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon, or to retain therefrom under any law of the United States, the obligor shall deduct and withhold a tax equal to 2 per centum of the interest upon such bonds, mortgages, deeds of trust, or other obligations, whether such interest is payable annually or at shorter or longer periods, if payable to an individual, a partnership, or a foreign corporation not engaged in trade or business within the United States and not having an office or place of business therein: *Provided*, That if the liability assumed by the obligor does not exceed 2 per centum of the interest, then the deduction and withholding shall be at the following rates: (A) 10 per centum in the case of a nonresident alien individual (except that such rate shall be reduced, in the case of a resident of a contiguous country, to such rate, not less than 5 per centum, as may be provided by treaty with such country), or of any partnership not engaged in trade or business within the United States and not having any office or place of business therein and composed in whole or in part of nonresident aliens, (B) in the case of such a foreign corporation, 15 per centum, and (C) 2 per centum in the case of other individuals and partnerships: *Provided further*, That if the owners of such obligations are not known to the withholding agent the Commissioner may authorize such deduction and withholding to be at the rate of 2 per centum or, if the liability assumed by the obligor does not exceed 2 per centum of the interest, then at the rate of 10 per centum.

PAR. E. Section 143 (b) of the Revenue Act of 1938 provides:

Nonresident aliens.—All persons, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States, having the control, receipt, custody, disposal, or payment of interest (except interest on deposits with persons carrying on the banking business paid to persons not engaged in business in the United States and not having an office or place of business therein), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income (but only to the extent that any of the above items constitutes gross income from sources within the United States), of any nonresident alien individual, or of any partnership not engaged in trade or business within the United States and not having any office or place of business therein and composed in whole or in part of nonresident aliens, shall (except in the cases provided for in subsection (a) of this section and except as otherwise provided in regulations prescribed by the Commissioner under section 215) deduct and withhold from such annual or periodical gains, profits, and income a tax equal to 10 per centum thereof, except that such rate shall be reduced, in the case of a nonresident alien individual a resident of a contiguous country, to such rate (not less than 5 per centum) as may be provided by treaty with such country: *Provided*, That no such deduction or withholding shall be required in the case of dividends paid by a foreign corporation unless (1) such corporation is engaged in trade or business within the United States or has an office or place of business therein, and (2) more than 85 per centum of the gross income of such corporation for the 3-year period ending with the close of its taxable year preceding the declarations of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under the provisions of section 119: *Provided further*, That the Commissioner may authorize such tax to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent. Under regulations prescribed by the Commissioner, with the approval of the Secretary, there may be exempted from such deduction and withholding the compensation for personal services of nonresident alien individuals who enter and leave the United States at frequent intervals.

PAR. F. Section 143 (c) of the Revenue Act of 1938 provides:

Return and payment.—Every person required to deduct and withhold any tax under this section shall make return thereof on or before March 15 of each year and shall on or before June 15, in lieu of the time prescribed in section 56, pay the tax to the official of the United States Government authorized to receive it. Every such person is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this section.

PAR. G. Section 144 of the Revenue Act of 1938 provides:

In the case of foreign corporations subject to taxation under this title not engaged in trade or business within the United States and not having any office or place of business therein, there shall be deducted and withheld at the source in the same manner and upon the same items of income as is provided in section 143 a tax equal to 15 per centum thereof, except that in the case of dividends the rate shall be 10 per centum, and except that in the case of corporations organized under the laws of a contiguous country such rate of 10 per centum with respect to dividends shall be reduced to such rate (not less than 5 per centum) as may be provided by treaty with such country; and such tax shall be returned and paid in the same manner and subject to the same conditions as provided in that section: *Provided*, That in the case of interest described in subsection (a) of that section (relating to tax-free covenant bonds) the deduction and withholding shall be at the rate specified in such subsection.

PAR. H. Section 901 of the Revenue Act of 1938 provides in part:

(a) When used in this Act—

(1) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(2) The term "corporation" includes associations, joint-stock companies, and insurance companies.

(3) The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this Act, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(4) The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State or Territory.

(5) The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(6) The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(7) The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 143 or 144.

* * * * *

(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

Pursuant to the provisions of section 62 of the Revenue Act of 1938 the following regulations are hereby prescribed to carry into effect the quoted provisions of the convention between the United States of America and Canada, under the Revenue Act of 1938 (the provisions of T. D. 4766, C. B. 1937–2, 158, applicable under the Revenue Acts of 1936 and 1937, remaining in full force and effect as to taxable years beginning prior to January 1, 1938):

ARTICLE 1. *Rate of tax.*—The convention was ratified and became effective August 13, 1937. Under the terms of the convention, the provisions of which are retroactive to January 1, 1936, the tax at the rate of 10 percent imposed by section 211 (a) is reduced to 5 percent with respect to the amount received from sources within the United States as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, by every nonresident alien individual not engaged in trade or business within the United States and not having an office or place of business therein, provided he is a resident of Canada.

Under the terms of the convention the tax at the rate of 10 percent imposed by section 231 (a) is reduced to 5 percent with respect to the amount received from sources within the United States as dividends, by every foreign corporation not engaged in trade or business within the United States and not having an office or place of business therein, provided it is organized under the laws of Canada.

ART. 2. *Withholding in general.*—The items of income from sources within the United States enumerated in sections 211 (a) and 231 (a) are subject to the withholding provisions of sections 143 and 144, at the rates specified therein, with the exception that all items of fixed or determinable annual or periodical income paid to nonresident alien individuals who are residents of Canada (other

than the compensation for personal services received by such residents who enter and leave the United States at frequent intervals) and dividends paid to nonresident foreign corporations which are organized under the laws of Canada are subject to withholding at the reduced rate of 5 percent.

ART. 3. *Resident of Canada or corporation organized under the laws of Canada.*—For the purpose of withholding, every individual whose address is in Canada (including a nonresident alien individual, fiduciary, or partnership) shall be considered by United States withholding agents as a resident of Canada, and every corporation whose address is in Canada shall be considered by such withholding agents as a corporation organized under the laws of Canada. These provisions relative to Canadian residents and Canadian corporations are based upon the assumption that the payee is the actual owner of the property from which the income is derived and consequently is the person liable to the tax upon such income.

A person receiving income which is distributable to an organization exempt from Federal income tax under section 101 of the Revenue Act of 1938, or corresponding sections of prior Revenue Acts, shall be considered merely a conduit through which the income flows and not a taxable entity. In preparing ownership certificate, Form 1001, the person receiving the income should make a notation thereon substantially as follows: "As this organization has been held to be exempt from the payment of income tax by the Commissioner of Internal Revenue under date of _____, the interest on this certificate is not subject to withholding," giving the date of the official letter in which the organization was held to be exempt. A similar statement made with respect to other items of fixed or determinable annual or periodical income which are subject to withholding will relieve the withholding agent from liability to withhold the tax.

ART. 4. *Recipient not actual owner.*—If the recipient in Canada is a nominee or agent through whom the income flows to a person who is not entitled to the reduced rate of 5 percent, i. e., a nonresident alien individual who is not a resident of Canada, or a nonresident foreign corporation not organized under the laws of Canada, the recipient in Canada from whom a tax of only 5 percent was withheld, becomes in turn a withholding agent, and is required to withhold an additional tax of 5 percent (10 percent on income other than dividends received for such foreign corporation) before transmitting the income.

(*a*) *Fiduciaries and partnerships.*—Fiduciaries and partnerships with an address in Canada are liable to have 5 percent income tax deducted at the source. If the fiduciary or partnership is acting as a nominee or agent receiving the income for and on behalf of a person other than a resident of Canada or a corporation organized under the laws of Canada, an additional tax of 5 percent or 10 percent, as the case may be, must be deducted by such Canadian fiduciary or partnership and remitted to the United States Treasury. If the fiduciary or partnership receives the income in its own right and distributes its income under a trust deed or partnership agreement, then no further tax in Canada need be deducted.

(*b*) *Tax-free covenant bonds.*—No additional withholding is required with respect to interest on so-called tax-free covenant bonds issued prior to January 1, 1934, where the liability assumed by the obligor exceeds 2 percent but under section 143 (a) of the Revenue Act of 1938 only 2 percent income tax is required to be withheld at the source. An additional tax of 5 percent or 10 percent, as the case may be, is required to be withheld, however, by Canadian withholding agents as above provided, (1) where the bonds were issued prior to January 1, 1934, and the liability assumed by the obligor does not exceed 2 percent; (2) where the bonds were issued on or after January 1, 1934, irrespective of the liability assumed by the obligor; (3) where the bonds do not contain a tax-free covenant, regardless of the date of issue.

ART. 5. *Return of tax withheld from persons whose addresses are in Canada.*—Every United States withholding agent shall make and file with the collector, in duplicate, an information return on Form 1042B, for the calendar year 1938 and each subsequent calendar year, in addition to withholding return, Form 1042, with respect to the items of income from which a tax of only 5 percent was withheld from persons whose addresses are in Canada. There shall be reported on Form 1042B not only such items of income listed on Form 1042, but also such items of interest listed on monthly returns, Form 1012, including items of interest where the liability for withholding is only 2 percent. In the case of corporations whose addresses are within Canada, only the fixed or determinable annual or periodical income from sources within the United States consisting of dividends should be reported.

ART. 6. *Returns filed by Canadian withholding agents.*—Form 1042 is the form to be prepared annually for the calendar year 1938 and each subsequent calendar year by persons in Canada who receive for the account of any person (other than a resident of Canada or a corporation organized under the laws of Canada) fixed or determinable annual or periodical income from sources within the United States which is subject to tax at the rate of 10 percent or 15 percent, as the case may be, but from which only 5 percent has been withheld as a result of the convention. Annual withholding return, Form 1042, should be forwarded to the collector of internal revenue, Baltimore, Md., accompanied by the tax shown to be due in United States dollars. An extension of time to June 15 is hereby granted to Canadian withholding agents in which to file such returns.

The following table of withholding rates under the Revenue Act of 1938 and the tax convention between the United States and Canada has been prepared for the purpose of making a summary of such rates readily available to withholding agents:

Withholding Rates Under the Revenue Act of 1938

Classes of taxpayers	Corporate bond interest			Dividends from domestic corporation	Dividends from foreign corporation	Salary or other compensation for personal services	Other fixed or determinable annual or periodical income from sources within the United States
	With tax-free covenant and issued before Jan. 1, 1934		Without tax-free covenant or issued on or after Jan. 1, 1934, with tax-free covenant				
	If corporation assumes over 2 percent of the tax	If corporation assumes not over 2 percent of the tax					
	Percent	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*
1. Citizen or resident individual, fiduciary, or partnership	2	2					
2. Nonresident individual, fiduciary, or partnership (except as stated in item 5 below)	2	10	10	10	10	[1] 10	10
3. Domestic corporation or resident foreign corporation							
4. Nonresident foreign corporation (except as stated in item 6 below)	2	15	15	10	10	15	15
5. Individual, fiduciary, or partnership, resident of Canada	2	5	5	5	5	([1])	5
6. Nonresident corporation organized under laws of Canada	2	15	15	5	5	15	15
7. Unknown owner	2	10	10				

[1] Salary or compensation for personal services rendered in the United States is not subject to withholding in the case of nonresident aliens, residents of Canada or Mexico, who enter and leave the United States at frequent intervals.

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved January 16, 1939.

JOHN W. HANES,
Acting Secretary of the Treasury.

Foreign Corporations, Information Regarding

Treasury Decision 4816—Income Tax—Revenue Act of 1938

Regulations under section 803, relating to returns of information with respect to foreign corporations.

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH A. Section 803 (Title V—Miscellaneous Provisions) of the Revenue Act of 1938, enacted May 28, 1938 (Public, No. 554, Seventy-fifth Congress, third session), provides:

SEC. 803. *Returns as to formation, etc., of foreign corporations.*

(a) *Requirement.*—Under regulations prescribed by the Commissioner with the approval of the Secretary, any attorney, accountant, fiduciary, bank, trust company, financial institution, or other person, who, after the date of the enactment of this Act, aids, assists, counsels, or advises in, or with respect to, the formation, organization, or reorganization of any foreign corporation, shall, within 30 days thereafter, file with the Commissioner a return.

(b) *Form and contents of return.*—Such return shall be in such form, and shall set forth, under oath, in respect of each such corporation, to the full extent of the information within the possession or knowledge or under the control of the person required to file the return, such information as the Commissioner with the approval of the Secretary prescribes by regulations as necessary for carrying out the provisions of the income-tax laws. Nothing in this section shall be construed to require the divulging of privileged communications between attorney and client.

(c) *Penalty.*—Any person required under subsection (a) to file a return, or to supply any information, who willfully fails to file such return, or supply such information, at the time or times required by law or regulations, shall, in lieu of other penalties provided by law for such offense, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $2,000, or imprisoned for not more than one year, or both.

(d) *Aid, etc., before enactment of act.*—The provisions of sections 340 and 341 (insofar as it relates to section 340) of the Revenue Act of 1936, added to such Act by section 201 of the Revenue Act of 1937, shall remain in force only with respect to aiding, assisting, counselling, or advising, on or before the date of the enactment of this Act.

PAR. B. Section 806 of Title V of the Revenue Act of 1938 provides:

SEC. 806. *Administration of oaths or affirmations.*—Any oath or affirmation required or authorized by any internal-revenue law or by any regulations made under authority thereof may be administered by any person authorized to administer oaths for general purposes by the law of the United States, or of any State, Territory, or possession of the United States, or of the District of Columbia, wherein such oath or affirmation is administered. This section shall not be construed as an exclusive enumeration of the persons who may administer such oaths or affirmations.

PAR. C. Section 901 (Title VI—General Provisions) of the Revenue Act of 1938 provides in part:

SEC. 901. *Definitions.*—(a) When used in this Act—

(1) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

* * * * *

(5) The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(6) The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

* * * * *

(11) The term "Secretary" means the Secretary of the Treasury.

(12) The term "Commissioner" means the Commissioner of Internal Revenue.

Pursuant to the above-quoted provisions and other provisions of the internal-revenue laws, the following regulations are hereby prescribed with respect to returns of information to be filed by attorneys, accountants, fiduciaries, banks, trust companies, financial institutions, or other persons as to the formation, organization, or reorganization of foreign corporations:

ARTICLE 1. *Information returns—(a) General.*—Any attorney, accountant, fiduciary, bank, trust company, financial institution, or other person, who, after May 28, 1938, aids, assists, counsels, or advises in, or with respect to, the formation, organization, or reorganization of any foreign corporation shall file with the Commissioner, within 30 days after giving such aid, assistance, counsel, or advice, an information return as provided in section 803 (a) and these regulations. The return must be filed in every such case (1) regardless of the nature of the counsel or advice given, whether for or against the formation, organization, or reorganization of the foreign corporation, or the nature of the aid or assistance rendered and (2) regardless of the action taken upon the advice or counsel, that is, whether the foreign corporation is actually formed, organized, or reorganized.

If, in a particular case, the aid, assistance, counsel or advice given by any person extends over a period of more than 1 day and not for more than 30 days, such person, to avoid the multiple filing of returns, may file a single return for the entire period. In such case, the return shall be filed within 30 days from the first day of such period. If in a particular case, the aid, assistance, counsel, or advice given by any person extends over a period of more than 30 days, such person may file a return at the end of each 30 days included within such period and at the end of the fractional part of a 30-day period, if any, extending beyond the last full 30 days. In each such case, the return must disclose all the required information which was not reported on a prior return.

(b) *Special provisions*—(1) *Employers.*—In the case of aid, assistance, counsel, or advice in, or with respect to, the formation, organization, or reorganization of a foreign corporation given by a person in whole or in part through the medium of subordinates or employees (including in the case of a corporation the officers thereof), the return of the employer must set forth to the full extent all information prescribed by these regulations, including that which, as an incident to such employment, is within the possession or knowledge or under the control of such subordinates or employees.

(2) *Employees.*—The obligation of a subordinate or employee (including in the case of a corporation the officers thereof) to file a return with respect to any aid, assistance, counsel, or advice in, or with respect to, the formation, organization, or reorganization of a foreign corporation, given as an incident to his employment, will be satisfied if a complete and accurate return as prescribed by these regulations is duly filed by the employer setting forth all of the information within the possession or knowledge or under the control of such subordinate or employee.

Clerks, stenographers, and other subordinates or employees, rendering aid or assistance solely of a clerical or mechanical character in, or with respect to, the formation, organization, or reorganization of a foreign corporation are not required to file returns by reason of such services.

(3) *Partners.*—In the case of aid, assistance, counsel, or advice in, or with respect to, the formation, organization, or reorganization of a foreign corporation given by one or more members of a partnership in the course of its business, the obligation of each such individual member to file a return will be satisfied if a complete and accurate return, as prescribed by these regulations, is duly filed by the partnership, executed by all the members of the firm who gave any such aid, assistance, counsel, or advice. If, however, the partnership has been dissolved at the time the return is due, individual returns must be filed by each member of the former partnership who gave any such aid, assistance, counsel, or advice.

(4) *Returns jointly made.*—If two or more persons aid, assist, counsel, or advise in, or with respect to, the formation, organization, or reorganization of a particular foreign corporation, any two or more of such persons may, in lieu of filing several returns, jointly execute and file one return.

(c) *Penalties.*—For criminal penalties for failure to file the returns required by section 803 (a) and these regulations, see section 803 (c) quoted in paragraph A.

(d) *Information returns and penalties under prior Acts.*—For information returns in the case of aid, assistance, counsel, or advice in, or with respect to, the formation, organization, or reorganization of any foreign corporation given on or before May 28, 1938, and for criminal penalties for failure to file such returns, see articles 340–1 and 340–2 of Chapter XXXIV added to Regulations 94 by Treasury Decision 4782, approved December 7, 1937 (C. B. 1937–2, 168), and section 803 (d) of the Revenue Act of 1938 quoted in paragraph A.

ART. 2. *Form of return.*—The returns under article 1 shall be made on Form 959. Such forms may, upon request, be procured from any collector. Each person should carefully prepare his return so as to set forth fully and clearly the information called for therein. Returns which have not been so prepared will not be accepted as meeting the requirements of the Act.

ART. 3. *Contents of returns.*—The return shall, in accordance with the provisions of these regulations and the instructions on the form, set forth the following information to the full extent such information is within the knowledge or possession or under the control of the person required to file the return:

(1) The name and the address of the person (or persons) to whom and the person (or persons) for whom or on whose behalf the aid, assistance, counsel, or advice was given;

(2) A complete statement of the aid, assistance, counsel, or advice given;

(3) Name and address of the foreign corporation and the country under the laws of which it was formed, organized, or reorganized;

(4) The month and year when the foreign corporation was formed, organized, or reorganized;

(5) A statement of how the formation, organization, or reorganization of the foreign corporation was effected;

(6) A complete statement of the reasons for, and the purposes sought to be accomplished by, the formation, organization, or reorganization of the foreign corporation;

(7) A statement showing the classes and kinds of assets transferred to the foreign corporation in connection with its formation, organization, or reorganization, including a detailed list of any stock or securities included in such assets, and a statement showing the names and addresses of the persons who were the owners of such assets immediately prior to the transfer;

(8) The names and addresses of the shareholders of the foreign corporation at the time of the completion of its formation, organization, or reorganization, showing the classes of stock and number of shares held by each;

(9) The name and address of the person (or persons) having custody of the books of account and records of the foreign corporation;

(10) Such other information as may be required by the return form; and

(11) Where any of the information required to be furnished is withheld because its character is claimed to be privileged as a communication between attorney and client within the meaning of section 803 (b), the return must so state and must contain a complete statement of the nature and the circumstances of the communication on which a decision as to the propriety of the claim of privilege may be reached.

If a person aids, assists, counsels, or advises in, or with respect to, the formation, organization, or reorganization of more than one foreign corporation, a separate return must be filed with respect to each foreign corporation.

ART. 4. *Verification of return.*—All returns required by section 803 (a) and these regulations shall be verified under oath or affirmation. The oath or affirmation may be administered by a person authorized to administer oaths for general purposes by the law of the United States, or of any State, Territory, or possession of the United States, or of the District of Columbia, wherein such oath or affirmation is administered, or by a consular officer of the United States. Such returns executed abroad may be attested free of charge before United States consular officers. If a foreign notary or other official having no seal shall act as attesting officer, the authority of such attesting officer shall be certified to by some judicial official or other proper officer having knowledge of the appointment and official character of the attesting officer.

ART. 5. *Place of filing returns.*—Returns required by section 803 (a) of the Revenue Act of 1938 and these regulations shall be filed with the Commissioner of Internal Revenue, Washington, D. C., attention of the Income Tax Unit, Records Division.

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved June 20, 1938.

STEPHEN B. GIBBONS,
Acting Secretary of the Treasury.

French Citizens and Corporations, Taxation of

Treasury Decision 4880—Income Tax

Regulations with respect to the taxation of French citizens and French corporations as affected by the convention and protocol on double taxation between the United States and the Republic of France, proclaimed by the President of the United States April 16, 1935, effective January 1, 1936.

To Collectors of Internal Revenue and Others Concerned:

PART I

PARAGRAPH A. The convention and protocol, proclaimed by the President of the United States on April 16, 1935, provides in part as follows:

"ARTICLE I

"Enterprises of one of the contracting States are not subject to taxation by the other contracting State in respect of their industrial and commercial profits except in respect of such profits allocable to their permanent establishments in the latter State.

"No account shall be taken, in determining the tax in one of the contracting States, of the purchase of merchandise effected therein by an enterprise of the other State for the purpose of supplying establishments maintained by such enterprise in the latter State.

"ARTICLE II

"American enterprises having permanent establishments in France are required to submit to the French fiscal administration the same declarations and the same justifications, with respect to such establishments, as French enterprises.

"The French fiscal administration has the right, within the provisions of its national legislation and subject to the measures of appeal provided in such legislation, to make such corrections in the declaration of profits realized in France as may be necessary to show the exact amount of such profits.

"The same principle applies mutatis mutandis to French enterprises having permanent establishments in the United States.

"ARTICLE III

"Income which an enterprise of one of the contracting States derives from the operation of aircraft registered in such State and engaged in transportation between the two States is taxable only in the former State.

"ARTICLE IV

"When an American enterprise, by reason of its participation in the management or capital of a French enterprise, makes or imposes on the latter, in their commercial or financial relations, conditions different from those which would be made with a third enterprise, any profits which would normally have appeared in the balance sheet of the French enterprise, but which have been, in this manner, diverted to the American enterprise, are subject to the measures of appeal applicable in the case of the tax on industrial and commercial profits, incorporated in the taxable profits of the French enterprise.

"The same principle applies mutatis mutandis, in the event that profits are diverted from an American enterprise to a French enterprise.

* * * * *

"ARTICLE VII

"Compensation paid by one of the contracting States to its citizens for labor or personal services performed in the other State is exempt from tax in the latter State.

"ARTICLE VIII

"War pensions paid by one of the contracting States to persons residing in the territory of the other State are exempt from tax in the latter State.

"ARTICLE IX

"The following classes of income paid in one of the contracting States to a corporation of the other State, or to a citizen of the latter State residing there,

are exempt from tax in the former State:

"(*a*) amounts paid as consideration for the right to use patents, secret processes and formulas, trade marks and other analogous rights;

"(*b*) income received as copyright royalties;

"(*c*) private pensions and life annuities.

"ARTICLE X

* * * * *

"The agreement shall become effective on the 1st day of January following the exchange of ratifications and shall remain effective for a period of 5 years, and thereafter until 12 months from the date on which either contracting party gives notice of its termination.

* * * * *

"*Protocol*

"At the moment of signing the convention on double taxation between the United States of America and the Republic of France, the undersigned plenipotentiaries, duly authorized by their respective Governments, have agreed, as follows:

"(1) The taxes referred to in this agreement are:

"(*a*) for the United States:

"The Federal income tax—but it is understood that Article I does not exempt from tax (1) compensation for labor or personal services performed in the United States; (2) income derived from real property located in the United States, or from any interest in such property, including rentals and royalties therefrom, and gains from the sale or the disposition thereof; (3) dividends; (4) interest.

"(*b*) for France:

"—in Articles I, II, III and IV, the tax on industrial and commercial profits (impot sur les benefices industriels et commerciaux);

"—in Articles III, V and VI, the tax on income from securities (impot sur les revenus des valeurs mobilieres);

"—in Articles VII, VIII and IX, the tax on wages and salaries, pensions and life annuities (impot sur les traitements et salaries, pensions et rentes viageres), and other schedular taxes (impots cedulaires) appropriate to the type of income specified in said articles;

"(2) The provisions of this agreement shall not be construed to affect in any manner any exemption, deduction, credit or other allowance accorded by the laws of one of the contracting States in the determination of the tax imposed by such State.

"(3) As used in this agreement:

"(*a*) The term 'permanent establishment' includes branches, mines, and oil wells, factories, workshops, warehouses, offices, agencies, and other fixed places of business, but does not include a subsidiary corporation.

"When an enterprise of one of the States carries on business in the other State through an agent established there who is authorized to contract for its account, it is considered as having a permanent establishment in the latter State.

"But the fact that an enterprise of one of the contracting States has business dealings in the other State through a bona fide commission agent or broker shall not be held to mean that such enterprise has a permanent establishment in the latter State.

"(*b*) The term 'enterprise' includes every form of undertaking whether carried on by an individual, partnership (societe en nom collectif), corporation (societe anonyme), or any other entity.

"(*c*) The term 'enterprise of one of the contracting States' means, as the case may be, 'American enterprise' or 'French enterprise.'

"(*d*) The term 'American enterprise' means an enterprise carried on in the United States by a citizen of the United States or by an American corporation or other entity; the term 'American corporation or other entity' means a partnership, corporation or other entity created or organized in the United States or under the law of the United States or of any State or Territory of the United States.

"(*e*) The term 'French enterprise' is defined in the same manner, mutatis mutandis, as the term 'American enterprise.'

"(*f*) The American corporations mentioned in Articles V and VI are those which, owing to their form of organization, are subject to article 3 of the decree of December 6, 1872. The present agreement does not modify the regime of 'abonnement' for securities.

"(*g*) The term 'United States,' when used in a geographical sense, includes only the States and the Territories of Alaska and Hawaii, and the District of Columbia.

"(*h*) The term 'France,' when used in a geographical sense, indicates the country of France, exclusive of Algeria and the Colonies."

PAR. B. The proclamation of the convention by the President of the United States on April 16, 1935, reads in part as follows:

"And whereas, the said convention and protocol have been ratified on both parts, and the ratifications of the two Governments were exchanged at Paris on the 9th day of April, one thousand nine hundred and thirty-five;

"And whereas, it is stipulated in Article X of the said convention that the convention shall become effective on the 1st day of January following the exchange of ratifications, that is to say on the 1st day of January, one thousand nine hundred and thirty-six;

"Now, therefore, be it known that I, Franklin D. Roosevelt, President of the United States of America, have caused the said convention and the said protocol to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof on and from the 1st day of January, one thousand nine hundred and thirty-six.

"In testimony whereof, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

"Done at the city of Washington this 16th day of April in the year of our Lord one thousand nine hundred and thirty-five, and of the Independence of the United States of America the one hundred and fifty-ninth.

[SEAL] FRANKLIN D. ROOSEVELT.

"By the President:

"CORDELL HULL,
"Secretary of State."

PAR. C. Section 22 (b) (7), Revenue Act of 1938, provides in part as follows:

SEC. 22. *Gross income.*

* * * * *

(*b*) *Exclusions from gross income.*—The following items shall not be included in gross income and shall be exempt from taxation under this title:

* * * * *

(7) *Income exempt under treaty.*—Income of any kind, to the extent required by any treaty obligation of the United States;

Pursuant to the provisions of section 62 of the Revenue Act of 1938, the following regulations are hereby prescribed to carry into effect the quoted provisions of the convention and protocol, or treaty, between the United States of America and the Republic of France, hereinafter referred to as the convention, for taxable years beginning after December 31, 1937:

PART II

EFFECT OF THE CONVENTION UPON THE DETERMINATION OF UNITED STATES TAXABLE INCOME OF FRENCH CITIZENS AND FRENCH CORPORATIONS

ARTICLE 1. *General.*—The primary purposes of the convention are to regulate the method of taxation of corporations of either of the contracting States carrying on industrial or commercial activities through a permanent establishment or a subsidiary corporation in the other State and to avoid double taxation upon certain special classes of income.

The specific classes of income relieved from United States income tax are:

(*a*) Industrial and commercial profits of a French enterprise having no permanent establishment in the United States.

(*b*) Income derived by a French enterprise from the operation of aircraft registered in France and engaged in transportation between the United States and France.

(*c*) Compensation paid by France to its citizens for labor or personal services performed in the United States.

(*d*) War pensions paid by France to persons residing in the United States.

(*e*) Income paid to a French corporation, or to a citizen of France residing in France—

(1) as consideration for the right to use patents, secret processes and formulas, trade marks and other analogous rights;

(2) as copyright royalties;

(3) as private pensions and life annuities.

Except as to those items of income expressly exempted by the convention, the tax liability of French citizens, not residents of the United States, and French corporations, is determined in accordance with the provisions of the revenue laws of the United States and the regulations thereunder applicable generally to nonresident alien individuals and to foreign corporations.

The convention does not affect the liability to tax of French citizens resident in the United States unless and to the extent such citizens are entitled to the benefits of Article VII or VIII of the convention. See articles 5 and 6 of these regulations. The tax liability of a United States citizen or United States resident, a member of a French partnership carrying on a French enterprise, is not affected by Article I of the convention. Such citizen or resident is subject to United States income tax upon his distributive share of its net income even though the other members of such partnership are not subject to tax upon their share of the partnership's industrial and commercial profits from sources within the United States.

The convention has no reference to the rates of taxation imposed by the respective countries and concerns only the determination of income arising in one of the contracting States to citizens or corporations of the other contracting State and subject to taxation in the former State.

These regulations are limited to a consideration of the factors involved in the application of: (*a*) the provisions of the convention alone; and (*b*) the provisions of the convention as extended by the Revenue Act of 1938. These regulations are not concerned with Article V or VI of the convention as such articles affect only the application of certain French tax laws and decrees.

ART. 2. *Definitions.*—Any word or term used in these regulations which is defined in the convention shall be given the definition assigned to such word or term in such convention. Any word or term used in these regulations which is not defined in the convention but is defined in the Revenue Act of 1938 shall be given the definition contained in the Revenue Act.

The term "permanent establishment" includes branches, mines and oil wells, factories, work shops, warehouses, offices, agencies and other fixed places of business. A French enterprise, as defined in the convention, carrying on business in the United States through an agent established there who is authorized to contract for its account, is considered to have a permanent establishment in the United States. However, the carrying on of business dealings in the United States by a French enterprise through a bona fide commission agent or broker does not constitute a permanent establishment in the United States. A French corporation doing business in the United States through a domestic subsidiary corporation has not, merely by reason of such fact, a permanent establishment in the United States.

The term "enterprise" means any commercial or industrial undertaking whether conducted by an individual, partnership, corporation or any other entity. It includes such activities as manufacturing, merchandising, mining, banking and insurance. It does not include the operation of, or the trading in, real property located in the United States. It does not include the rendition of personal services. Hence, a French citizen rendering personal services within the United States is not, merely by reason of such service, engaged in an enterprise within the meaning of the convention and his liability to Federal income tax is unaffected by Article I of the convention.

The term "French enterprise" means an enterprise carried on in France by a citizen of France or by a French corporation or other entity. The term "French corporation or other entity" of the convention means a partnership, corporation or other entity created or organized in France or under the law of France. If, for example, a French citizen or French corporation does not carry on an enterprise in France it is not a French enterprise within the meaning of the convention even though it carries on an enterprise in some other foreign country and hence such enterprise is not relieved by the convention from United States income tax upon its industrial and commercial profits from sources within the United States even though it has no permanent establishment therein.

The term "industrial and commercial profits" means the profits arising from the industrial, mercantile, or manufacturing or like undertakings of a French enterprise, as defined in this article. For the purpose of the exemption under Article I of the convention such term does not include gains from the sale or exchange within the United States of capital assets as defined in section 117 of the Revenue Act of 1938 unless it can be shown by clear and convincing evidence that such sale or exchange was incident, and had a necessary relation, to the commercial and industrial activities of the French enterprise. For treatment of such gains under the Revenue Act of 1938, see articles 8 (*b*) and 9 (*b*). Such term does not include dividends, interest, compensation for labor or personal services, or income derived from real property or from any interest in such property including rentals and royalties therefrom and gains from the sale or disposition thereof.

ART. 3. *Scope of convention with respect to determination of taxable income of French citizen or a French corporation carrying on a French enterprise in the United States*—(*a*) *General.*—Article I of the convention adopts the principle that an enterprise of one of the contracting States shall not be taxable in the other contracting State in respect of its industrial and commercial profits unless it has a permanent establishment in the latter State. Hence, a French enterprise is subject to tax upon its industrial and commercial profits from sources within the United States only if it has a permanent establishment within the United States. From the standpoint of Federal income taxation the article has application only to a French enterprise and to the industrial and the commercial income thereof from sources within the United States. It has no application to compensation for labor or personal services performed in the United States, nor to income derived from real property located in the United States, or from any interest in such property, including rentals and royalties therefrom, and gains from the sale or the disposition thereof, nor to dividends or interest. Such latter items of income are, except as otherwise provided in the convention and in these regulations, subject to tax as income of French citizens or French corporations, in the same manner and subject to the same provisions as are applicable to other nonresident aliens and foreign corporations. As to what is a "French enterprise," a "permanent establishment," and "industrial and commercial profits," see article 2.

(*b*) *No United States permanent establishment.*—A French citizen or a French corporation carrying on a French enterprise but having no permanent establishment in the United States is not subject to United States income tax upon its industrial and commercial profits from sources within the United States. As to what constitutes a "French enterprise," see article 2. As to what constitutes "industrial and commercial profits," see article 2. For example, if such French corporation sells stock in trade, such as wine or cosmetics, through a bona fide commission agent or broker in the United States, the resulting profit is, under the terms of the convention, relieved from United States income tax. Such French corporation, however, remains subject to tax upon all other items of income from sources within the United States and not expressly exempted from such tax under the convention. However, under the provisions of Article IX of the convention the following items, otherwise taxable, paid to

citizens of France residing in France, or to French corporations, are expressly exempt from the tax:

(1) Amounts paid as consideration for the right to use patents, secret processes, and formulas, trade marks and other analogous rights;

(2) Income received as copyright royalties;

(3) Private pensions and life annuities.

The exemption as to such items does not extend to French citizens residing elsewhere than in France nor to individuals residing in France who are not citizens of France.

(c) *United States permanent establishment.*—A French citizen or a French corporation carrying on a French enterprise which has a permanent establishment in the United States is subject to tax upon his or its entire net income (including industrial and commercial profits) from sources within the United States, subject to the exemptions expressly provided for in Article IX of the convention. See article 7. In the determination of the income of such French citizen or corporation from sources within the United States all industrial and commercial profits from sources within the United States shall be deemed to be allocable to the permanent establishment within the United States. The net income from sources within the United States of such enterprise will be determined in accordance with the provisions of section 119, Revenue Act of 1938. In determining such income no account shall be taken of the purchase of goods, wares, or merchandise within the United States for the purpose of supplying establishments of the enterprise maintained by such citizen or corporation in France.

A French citizen or corporation carrying on a French enterprise having business dealings in the United States through a bona fide commission agent or broker therein has not, merely by reason of such transactions, a permanent establishment in the United States and hence is relieved by the convention from United States income tax upon his industrial and commercial profits arising from such transactions. However, a French citizen or French corporation not carrying on a French enterprise, having business dealings in the United States through a bona fide commission agent or broker is not by the convention relieved from United States income tax on the resulting profit. Such French citizen or French corporation is subject to tax upon the income resulting from such transactions in the same manner and subject to the same provisions and exceptions, under the Revenue Act of 1938, as are applicable to other nonresident aliens and foreign corporations. See articles 8 (*a*) and 9. For definition of the terms "French enterprise," "permanent establishment," and "commercial and industrial profits," see article 2.

ART. 4. *Control of a domestic enterprise by a French enterprise.*—Article IV of the convention provides that if a French enterprise by reason of its control of a domestic business imposes conditions different from those which would result from normal bargaining between independent enterprises, the accounts between the enterprises will be adjusted so as to ascertain the true net income of the domestic enterprise. The purpose is to place the controlled domestic enterprise on a tax parity with an uncontrolled domestic enterprise by determining, according to the standard of an uncontrolled enterprise, the true net income from the property and business of the controlled enterprise. The convention contemplates that if the accounting records do not truly reflect the net income from the property and business of such domestic enterprise the Commissioner shall intervene and, by making such distributions, apportionments or allocations as he may deem necessary of gross income or deductions or of any item or element affecting net income as between such domestic enterprise and the French enterprise by which it is controlled or directed, determine the true net income of the domestic enterprise.

ART. 5. *Compensation paid by the Republic of France to its citizens for services rendered in the United States.*—Under Article VII of the convention, French citizens are relieved from United States income tax upon wages, fees, salary, remunerations or other amounts paid by the Republic of France to its citizens as compensation for labor or personal services performed in the United States. Such exemption is effective on and after January 1, 1936. The character of the services has no bearing upon the exemption from the tax and hence the test set forth in section 116 (h) (1) (B), Revenue Act of 1938, has no application in so far as the year 1938 and subsequent years are concerned.

ART. 6. *War pensions.*—Under Article VIII of the convention, war pensions paid by the Republic of France to persons residing in the United States are exempt from United States income tax. The term "war pensions," for the purposes of these regulations, includes pensions received under the provisions of the French Military Pensions Act of March 31, 1919, or for the services of the beneficiary or another in the military or naval forces of the Republic of France in time of war. It is not necessary that the recipient of such pension be a citizen of France. Such pension in the hands of a United States citizen recipient, if residing in the United States, is exempt from tax.

ART. 7. *Patents, formulas and copyright royalties, pensions and annuities.*—The following items of income paid to a corporation organized under the laws of France or to a citizen of France residing in France are exempt from Federal income tax under the provisions of Article IX of the convention:

(*a*) Amounts paid as consideration for the right to use patents, secret processes and formulas, trade marks and other analogous rights;

(*b*) Income received as copyright royalties;

(*c*) Private pensions and life annuities.

Such items are, therefore, not subject to the withholding provisions of the Revenue Act of 1938. To avoid withholding of the tax at the source the French citizen or corporation, as the case may be, should notify by letter the payor thereof that such income is exempt from taxation under the provisions of the convention. Such letter from a citizen of France shall contain his address and a statement that he is a citizen of France residing in France. The letter from such corporation shall contain the address of its office or place of business and a statement that it is a corporation organized under the laws of the Republic of France, and shall be signed by an officer of the corporation, giving his official title. The letter of notification, or a copy thereof, should be immediately forwarded by the recipient to the Commissioner of Internal Revenue, Sorting Section, Washington, D. C.

PART III

TAX LIABILITY OF FRENCH CITIZENS AND FRENCH CORPORATIONS UNDER THE REVENUE ACT OF 1938, AS MODIFIED BY THE CONVENTION

ART. 8. Taxation of a French citizen (not a resident of the United States) under the Revenue Act of 1938, as modified by the convention.

General.—A French citizen, not a resident of the United States, is subject to the provisions of the Revenue Act of 1938 applicable to nonresident alien individuals generally, but such citizen is entitled to the the exemptions provided in the convention to which other nonresident aliens are not entitled. Section 211 of the Revenue Act of 1938 classifies nonresident alien individuals into three classes: (1) nonresident alien individuals not engaged in trade or business within the United States and not having an office or place of business therein at any time during the taxable year, and deriving in the taxable year not more than $21,600 gross amount of fixed or determinable annual or periodical income from sources within the United States; (2) nonresident alien individuals not engaged in trade or business within the United States and not having an office or a place of business therein at any time during the taxable year and deriving in the taxable year more than $21,600 gross amount of fixed or determinable annual or periodical income from sources within the United States; and (3) nonresident alien individuals who at any time during the taxable year are engaged in trade or business in the United States or have an office or place of business therein.

Whether a nonresident alien has an "office or place of business" within the United States depends upon the facts of the particular case. The term "office or place of business," however, implies a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are, effected.

While Article I of the convention (in so far as concerns individuals) applies only to French citizens carrying on a French enterprise and has no application to those not carrying on such enterprise, section 211 makes no distinction between the two classes, and applies alike to both groups.

This article treats of the taxation of French citizens, not resident in the United States, under section 211, Revenue Act of 1938, as modified by the convention, following the classification prescribed in that section.

(a) *No United States business or office—General rule.*—A French citizen, not a resident of the United States coming within class (a) of the classification prescribed in section 211 (whether or not he carries on a French enterprise), is liable to the tax at the rate of 10 percent, imposed by section 211 (a), Revenue Act of 1938, upon the gross amount of his fixed or determinable annual or periodical gains, profits and income from sources within the United States. Such gains, profits and income are to be determined under the provisions of section 119, Revenue Act of 1938. Specific items of fixed or determinable annual or periodical income are enumerated in the Act as interest (except interest on deposits with persons carrying on the banking business which is nontaxable under the Act), dividends, rents, salaries, wages, premiums, annuities, compensation, remunerations and emoluments, but other fixed or determinable annual or periodical gains, profits and income are also subject to the tax, as, for instance, royalties. However, a French citizen who is a resident of France is not taxable upon those items of income enumerated in Article IX of the convention and in article 3 (b) of these regulations. See article 7.

The term "fixed or determinable annual or periodical income" within the meaning of section 211 (a) does not include industrial and commercial profits as that term is used in the convention. Under the Revenue Act of 1938, as modified by the convention, a French citizen coming within section 211 (a) or section 211 (c) of that Act is exempt from United States income tax on industrial and commercial profits. For example, the convention exempts from tax profits realized by such French citizen who carries on a French enterprise from transactions in the United States in goods, wares or merchandise through a resident broker or commission agent. If, however, such citizen does not carry on such enterprise such transactions are not exempt under the convention and constitute engaging in trade or business within the United States and he is accordingly taxable upon the profit resulting from such transactions under section 211 (b), Revenue Act of 1938. On the other hand, a French citizen, not a resident of the United States, but taxable under section 211 (a) of the Act, whether or not he carries on a French enterprise, is not liable to United States income tax upon profits realized from transactions in stocks, securities or commodities in the United States through a resident broker, commission agent, or custodian. However, a French citizen who performs personal services in the United States at any time within the taxable year is liable to the tax upon profits arising from transactions in stocks, securities or commodities, except where it can be shown that such citizen is only temporarily present in the United States and meets the other conditions with respect to personal service laid down in section 211 (b), Revenue Act of 1938. As to when such profits constitute "industrial and commercial profits," see article 2. As to withholding of the tax at the source, see section 143, Revenue Act of 1938.

(b) *No United States business or office—Aggregate more than $21,600.*—A French citizen, not a resident of the United States, coming within class (c) of the classification prescribed in section 211 (whether or not he carries on a French enterprise) is, under the provisions of section 211 (c), subject to tax only upon his fixed or determinable annual or periodical income specified in section 211 (a) determined under the provisions of section 119, minus (1) the deductions properly allocable to such income and (2) the so-called "charitable contributions" deduction provided in section 213 (c). Such nonresident alien is entitled to the credits against net income allowable to an individual by section 25, subject to the limitations provided in section 214. However, the tax thus computed under sections 11 and 12 shall in no such case be less than 10 percent of the gross amount of such fixed or determinable annual or periodical income from sources within the United States.

(c) *United States business or office.*—A French citizen not a resident of the United States and not carrying on a French enterprise, coming within class (b) of the classification prescribed in section 211, or a French citizen carrying on a French enterprise and who has a permanent establishment in the United States is, like other nonresident aliens, liable to the normal tax of 4 percent imposed by section 11 of the Act and to the graduated surtax imposed by section 12 (b) of the Act, upon his net income from sources within the United States (gross income from sources within the United States minus the statutory deductions provided in sections 23 and 213) less the credits against net income allowed an individual by section 25. Such net income includes all industrial and commercial profits from sources within the United States. Such net income is to be determined under the provisions of section 119, Revenue Act of 1938, but in determining such income no account shall be taken of the purchase of merchandise within the United States for the purpose of supplying establishments of the enterprise, if any, maintained by such citizen in France. In the determination of the income of such French citizen from sources within the United States all industrial and commercial profits from sources within the United States shall be deemed to be allocable to his permanent establishment within the United States. If, however, such French citizen is a resident of France, he is not taxable upon those items of income enumerated in Article IX of the convention and referred to in paragraph (a) of this article with respect to French citizens subject to tax under section 211 (a). See article 7.

A French citizen having an office or place of business within the United States within the meaning of section 211 of the Revenue Act of 1938, shall be presumed (if he carries on a French enterprise) to have a permanent establishment in the United States within the meaning of the convention.

A French citizen carrying on a French enterprise who carries on business transactions through a bona fide commission agent or broker in the United States and who has no permanent establishment in the United States is not liable to income tax on the industrial and commercial profits arising to him from such transactions. However, a French citizen not carrying on a French enterprise is held to be engaged in trade or business in the United States if he sells therein through a commission agent or broker goods, wares or merchandise (not including stocks, securities or commodities) and, hence, is liable to income tax on the resulting profit. Such French citizen, whether or not he carries on a French enterprise, coming within class (a) or class (c) of the classification prescribed in section 211 of the Revenue Act of 1938 is, however, not liable to the tax upon profits arising from transactions in stocks, securities or commodities through a resident broker, commission agent or custodian. As to what constitutes a "French enterprise," see article 2. As to what constitutes a "permanent establishment," see article 2.

As to the computation of gross income, the allowance of deductions and credits, the requirements as to filing of returns and payment of the tax in the case of nonresident aliens generally, including French citizens, see sections 211 to 219, inclusive, Revenue Act of 1938.

(d) *Member of French partnership.*—Whether the liability to the tax of a French citizen who is a member of a partnership is affected by Article I of the convention depends upon the status

of the partnership. Article I does not apply unless such partnership; (1) is created or organized in France; and (2) carries on a French enterprise. Thus, a partnership created or organized in the United States, even though composed in whole or in part of French citizens, is not a French enterprise and hence is not affected by the convention. A French citizen, not resident in the United States, a member of such partnership, is taxable under the provisions of section 211 as are other nonresident aliens. If, however, such French citizen is a member of a partnership meeting the tests set forth in this paragraph, the United States tax liability of such French citizen shall be determined as provided in paragraph (*a*) or (*b*) or (*c*) of this article, whichever is applicable, dependent upon whether or not the partnership has a permanent establishment in the United States.

ART. 9. Taxation of a French corporation under the Revenue Act of 1938 as modified by the convention.

General.—A corporation organized under the laws of France is subject to those provisions of the Revenue Act of 1938 applicable to foreign corporations generally but such corporation is entitled to the exemptions provided in the convention to which other foreign corporations are not entitled.

Section 231 of the Revenue Act of 1938 classifies foreign corporations into two groups: (1) those not engaged in trade or business within the United States and not having an office or place of business therein (hereinafter referred to as nonresident foreign corporations); and (2) those which at any time within the taxable year are engaged in trade or business within the United States or have an office or place of business therein (hereinafter referred to as resident foreign corporations).

Whether a foreign corporation has an "office or place of business" within the United States depends upon the facts of the particular case. The term "office or place of business," however, implies a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are, effected.

While Article I of the convention, in so far as corporations are concerned, applies only to French corporations carrying on a French enterprise and has no application to those not carrying on such enterprise, section 231 makes no distinction between the two classes, such section applying alike to both groups.

This article treats of the taxation of French corporations under that section, as modified by the convention, following the classification prescribed in that section.

(*a*) *Nonresident French corporations.*—A French corporation (whether or not it carries on a French enterprise) not engaged in trade or business within the United States and not having an office or place of business therein at any time within the taxable year is liable to the tax at the rate of 15 percent (10 percent in the case of dividends) imposed by section 231 (a), Revenue Act of 1938, upon the gross amount of its fixed or determinable annual or periodical gains, profits and income from sources within the United States. Such gains, profits and income are to be determined under the provisions of section 119, Revenue Act of 1938. Specific items of fixed or determinable annual or periodical income are enumerated in the Act as interest (except interest on deposits with persons carrying on the banking business which is nontaxable under the Act), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, but other fixed or determinable annual or periodical gains, profits and income are also subject to tax, as, for instance, royalties. However, a French corporation is not taxable upon those items of income enumerated in Article IX of the convention and referred to in article 8 (*a*) with respect to French citizens subject to tax under section 211 (a), Revenue Act of 1938. See article 7.

The term "fixed or determinable annual or periodical income" within the meaning of section 231 (a), Revenue Act of 1938, does not include industrial and commercial profits as that term is used in the convention. Under the Revenue Act of 1938 as modified by the convention a French corporation taxable under section 231 (a) of that Act is exempt from United States income tax on industrial and commercial profits. For example, under the convention profits realized by such French corporation, which carries on a French enterprise, from transactions in the United States in goods, wares or merchandise through a resident broker or commission agent are not subject to tax. If, however, such corporation does not carry on such enterprise such transactions are not exempt under the convention and constitute engaging in trade or business within the United States and it is accordingly taxable upon the resulting profit under section 231 (b), Revenue Act of 1938. On the other hand, a French corporation taxable under section 231 (a), whether or not it carries on a French enterprise, is not liable to United States income tax upon profits realized from transactions in stocks, securities or commodities in the United States through a resident broker, commission, agent or custodian.

(*b*) *Resident French corporations.*—A French corporation, not carrying on a French enterprise, which at any time within the taxable year is engaged in trade or business within the United States or has an office or place of business therein, or a French corporation, carrying on a French enterprise, which has a permanent establishment in the United States, is, like other foreign corporations, liable to the tax of 19 percent imposed by section 14 (e), Revenue Act of 1938, upon its special class net income from sources within the United States (gross income from sources within the United States minus the statutory deductions provided in sections 23 and 232 and the credits provided in section 26 (a) and (b) of the Revenue Act of 1938). Such net income includes all industrial and commercial profits from sources within the United States. See article 3 (*c*). Such net income is to be determined under the provisions of section 119, Revenue Act of 1938, but in determining such income no account shall be taken of the purchase of goods, wares, or merchandise within the United States for the purpose of supplying establishments maintained by such corporation in France. In the determination of the income of such French corporation from sources within the United States all industrial and commercial profits from sources within the United States shall be deemed to be allocable to its permanent establishment within the United States. Such corporation is not taxable upon those items of income enumerated in Article IX of the convention and referred to in paragraph (*a*) of this article with respect to nonresident French corporations. See article 7.

A French corporation having an office or place of business within the United States within the meaning of section 231 of the Revenue Act of 1938, shall be presumed (if it carries on a French enterprise) to have a permanent establishment in the United States within the meaning of the convention.

A French corporation carrying on a French enterprise which carries on business transactions through a bona fide commission agent or broker in the United States and which has no permanent establishment in the United States is not liable to income tax on the industrial and commercial profits arising to it from such transactions. However, a French corporation not carrying on a French enterprise is held to be engaged in trade or business in the United States if it sells therein, through a commission agent or broker, goods, wares or merchandise (not including stocks, securities or commodities) and, hence, is liable to income tax on the resulting profit. Such French corporation, whether or not it carries on a French enterprise, otherwise liable to the tax imposed by subsection (a) of section 231 of the Revenue Act of 1938 is, however, not liable to the tax upon profits arising from transactions in stocks, securities or commodities through a resident broker, commission agent or custodian. As to what constitutes a "French enterprise," see article 2. As to what constitutes a "permanent establishment," see article 2. As to the computation of gross income, the allowance of deductions and credits, the requirements as to filing of returns and payment of the tax, in the case of foreign corporations generally, including French corporations, see sec-

tions 231 to 236, inclusive, Revenue Act of 1938.

MILTON E. CARTER,
Acting Commissioner of Internal Revenue.

Approved January 5, 1939.

JOHN W. HANES,
Acting Secretary of the Treasury.

Insolvent Banks, Taxes of

Treasury Decision 4882

Regulations relating to assessment and collection of taxes of insolvent banks and trust companies.

To Collectors of Internal Revenue and Others Concerned:

Section 818 of the Revenue Act of 1938, enacted May 28, 1938 (Public, No. 554, Seventy-fifth Congress, Chapter 289, third session), provides:

SEC. 818. *Taxes of insolvent banks.*

Section 22 of the Act of March 1, 1879 (20 Stat. 351; 12 U. S. C. 570), is amended to read as follows:

"SEC. 22. (a) Whenever and after any bank or trust company, a substantial portion of the business of which consists of receiving deposits and making loans and discounts, has ceased to do business by reason of insolvency or bankruptcy, no tax shall be assessed or collected, or paid into the Treasury of the United States on account of such bank, or trust company, which shall diminish the assets thereof necessary for the full payment of all its depositors; and such tax shall be abated from such national banks as are found by the Comptroller of the Currency to be insolvent; and the Commissioner of Internal Revenue, when the facts shall appear to him, is authorized to remit so much of the said tax against any such insolvent banks and trust companies organized under State law as shall be found to affect the claims of their depositors.

"(b) Whenever any bank or trust company, a substantial portion of the business of which consists of receiving deposits and making loans and discounts, has been released or discharged from its liability to its depositors for any part of their claims against it, and such depositors have accepted, in lieu thereof, a lien upon subsequent earnings of such bank or trust company, or claims against assets segregated by such bank or trust company or against assets transferred from it to an individual or corporate trustee or agent, no tax shall be assessed or collected, or paid into the Treasury of the United States on account of such bank, or trust company, such individual or corporate trustee or such agent, which shall diminish the assets thereof which are available for the payment of such depositor claims and which are necssary for the full payment thereof.

"(c) Any such tax so collected shall be deemed to be erroneously collected, and shall be refunded subject to all provisions and limitations of law, so far as applicable, relating to the refunding of taxes, but tax so abated or refunded after the date of the enactment of the Revenue Act of 1938 shall be reassessed whenever it shall appear that payment of the tax will not diminish the assets as aforesaid. The running of the statute of limitations on the making of assessment and collection shall be suspended during, and for ninety days beyond, the period for which, pursuant to this section, assessment or collection may not be made, and a tax which has been abated may be reassessed and collected during the time within which had there been no abatement, collection might have been made.

"(d) This section shall not apply to any tax imposed by the Social Security Act."

ARTICLE 1. *Effective date of amendment.*—The amendment of section 22, made by section 818 of the Revenue Act of 1938, is effective on May 28, 1938, the date of enactment of the Revenue Act of 1938.

ART. 2. *Banks and trust companies covered.*—Section 22 (as amended) of the Act of March 1, 1879, applies to any national bank, or bank or trust company organized under State law, a substantial portion of the business of which consists of receiving deposits and making loans and discounts, and which has—

(*a*) ceased to do business by reason of insolvency or bankruptcy, or

(*b*) been released or discharged from its liability to its depositors for any part of their deposit claims, and the depositors have accepted in lieu thereof a lien upon its subsequent earnings or claims against its assets either (1) segregated and held by it for benefit of the depositors or (2) transferred by it to an individual or corporate trustee or agent who holds the assets for the benefit of the depositors.

ART. 3. *Definitions.*—As hereinafter used in these regulations:

(*a*) The term "section," unless otherwise indicated by the context, means section 22 of the Act of March 1, 1879, as amended by section 818 of the Revenue Act of 1938.

(*b*) The term "bank," unless otherwise indicated by the context, means any national bank, or bank or trust company organized under State law, within the scope of the section. See article 2.

(*c*) The term "effective date" means May 28, 1938.

(*d*) The term "Commissioner" means the Commissioner of Internal Revenue.

(*e*) The term "collector" means collector of internal revenue.

ART. 4. *Scope of section generally.*—The section prior to amendment was intended to assist depositors of a bank which had ceased to do business by reason of insolvency to recover their deposits, by prohibiting collection of taxes of the bank which would diminish the assets necessary for payment of its depositors. By the amendment like assistance is given to depositors of banks which are in financial difficulties but which, in certain conditions, continue in business.

In order that the section shall operate in a case where the bank continues business it is necessary that the depositors shall agree to accept, in lieu of all or a part of their deposit claims as such, claims against segregated assets, or a lien upon subsequent earnings of the bank, or both. When such an agreement exists no tax diminishing such assets or earnings, or both, otherwise available and necessary for payment of depositors, may be collected therefrom. If, under such an agreement, the depositors have the right also to look to the unsegregated assets of the bank for recovery, in whole or part, the unsegregated assets are likewise, to the extent of the depositors' claims, unavailable for tax collection.

To illustrate the working of the section, assume that depositors agree to forego 30 percent of their deposit claims, that as to 45 percent they will look to segregated assets and 60 percent of the earnings from bank operations, and that as to the remaining 25 percent of the deposit claims the bank remains liable. The segregated assets and 60 percent of the earnings from bank operations are immune from tax collection until the total realizations from such source are sufficient to meet the percentage of the depositors' claims payable from that source. When the realization from such source is sufficient to satisfy the percentage of the depositors' claims chargeable thereto, any balance of the segregated assets, and the stated percentage of bank earnings, will be available for tax collection. The unsegregated assets and the other 40 percent of bank earnings will be available for tax collection to the extent that collection therefrom will not diminish the amount necessary for payment of outstanding depositors' claims other than those allocated to the segregated assets. See article 11.

For the purposes of the section, depositors' claims include bona fide interest, either on the deposits as such, or on the claims accepted in lieu of deposits as such.

The section is not intended for the relief of banks as such, and does not prevent collection of tax from assets not necessary, or not available, for payment of depositors. The section is not for the relief of creditors other than depositors, although it may incidentally operate for their benefit. See article 11.

ART. 5. *Segregated or transferred assets.*—In a case involving segregated or transferred assets, it is not necessary, for application of the section, that the assets shall technically constitute a trust fund. It is sufficient that segregated assets be definitely separated from other assets of the bank and that transferred assets be definitely separated both from other assets of the bank and from other assets held or owned by the trustee or agent to whom assets of the bank have been transferred; that the bank be wholly or partially released from liability for repayment of deposits made with it as such; and that the depositors have claims against the separated assets. Any excess of separated assets over the amount necessary for payment of such depositors will be available for tax collection.

Where the segregated assets are transferred to a separate corporate trustee or corporate agent the assets are within the protection of the section no matter by whom the stock of such corporation is held.

However, property of a separate corporation not conveyed by the bank pursuant to an insolvency agreement with depositors, is not within the immunity

of the section, even though the corporation's stock is owned by the bank. Tax due from a separate corporation to which assets of an insolvent bank are conveyed is collectible, even though such tax be due to the property so conveyed, except in so far as tax collection will diminish assets conveyed by the bank for benefit of depositors or the earnings from such assets to which the depositor are entitled, and which are necessary for payment of the depositors' claims. Other assets and earnings of a separate corporation are available for collection of the taxes of such corporation even though the assets and earnings of such corporation if received by the bank would be available for satisfaction of claims of the bank's depositors and such claims can not otherwise be paid.

ART. 6. *Unsegregated assets*—(*a*) *Depositors' claims against assets.*—Claims of depositors, to the extent that they are to be satisfied out of segregated assets, will not be considered in determining the availability of unsegregated assets for tax collection. If depositors have agreed to accept payment out of segregated assets only, collection of tax from unsegregated assets will not diminish the assets available and necessary for payment of the depositors' claims. Thus, it may be possible to collect taxes from the unsegregated assets of a bank although the segregated assets are immune under the section.

If the unsegregated assets of the bank remain subject to any portion of the depositors' claims, such unsegregated assets will be within the immunity of the section only to the extent necessary to satisfy the claims to which such assets are subject. Taxes will still be collectible from the unsegregated assets to the extent of the amount by which the total value of such assets exceeds the liability to depositors to be satisfied therefrom.

(*b*) *Depositors' claims against earnings.*—Even though under a bona fide agreement a bank has been released from depositors' claims as to unsegregated assets, if all or a portion of its earnings are subject to depositors' claims, all assets the earnings from which, in whole or part, are charged with the payment of depositors' claims, will be immune from tax collection. But see article 7.

ART. 7. *Income*—(*a*) *Availability for tax collection.*—Income, whether from segregated or unsegregated assets, which is necessary for, applicable to, and actually used for, payment of depositors' claims, is within the immunity of the section. If only a portion or percentage of income from segregated or unsegregated assets is available and necessary for payment of depositors' claims, the remaining income is available for tax collection.

(*b*) *Tax liability.*—The fact that earnings may be wholly or partly unavailable under the section for collection of taxes does not exempt the income, or any part thereof, from tax liability. The section affects collectibility only, and is not concerned with taxability. Accordingly, the tax on income of a given year shall ordinarily be determined, even though, under the section, assessment and collection must be postponed. The tax shall be determined with respect to the entire taxable income and not merely with respect to the portion of the earnings out of which tax may be collected.

(*c*) *Example:* An agreement between a bank subject to tax under section 14 (*d*) of the Revenue Act of 1938 and its depositors provides (*a*) that certain assets are to be segregated for the benefit of the depositors who have waived a percentage of their deposits; (*b*) that 60 percent of the bank's earnings shall be paid to the depositors until the portion of their claims not waived has been paid; and (*c*) that the unsegregated capital assets shall not be subject to depositors' claims. The special class net income of the bank for the calendar year 1938 is $10,000, and that amount also constitutes its earnings for that year. The bank has an outstanding tax liability for prior years of $7,000. The income tax liability of the bank for 1938 is 16½ percent of $10,000, or $1,650, making a total outstanding tax liability of $8,650. The portion of the earnings of the bank for 1938 available for tax collection after provision for depositors is $4,000 ($10,000 less 60 percent, or $6,000). Of the total outstanding tax liability of $8,650, $4,000 may be assessed and collected immediately, leaving $4,650 to be collected from the 40 percent of future annual earnings not covered by the agreement, from any excess of the segregated assets over the amount due depositors therefrom, and from unsegregated assets to the extent that collection of tax therefrom will not reduce the earnings to which depositors are entitled under the agreement. See article 6 (*b*).

ART. 8. *Abatement and refund.* — An assessment or collection, whether made before or after the amendment, contrary to the section when made, is subject to abatement or refund within the applicable statutory period of limitations.

An abatement or refund after the amendment is equally allowable whether assessment or collection was erroneous because collection would diminish assets necessary for payment of depositors, or because the same tax had been properly abated or refunded on or before the effective date of the amendment, and reassessed or collected after such date. See article 12. However, in the absence of prior abatement or refund on or before the date of the amendment, a claim for abatement or refund will not be allowed if, at the time of examination of the claim, collection would not diminish the assets necessary for payment of depositors. If there was a prior proper abatement or refund on or before the effective date of the amendment, a claim for abatement or refund of the same tax reassessed or recollected after the effective date of the amendment may be allowed even though the assets are sufficient to meet claims of depositors.

A tax assessed prior to the effective date of the amendment and in accordance with the section as it then existed is subject to abatement where assessment, had it been made after the effective date of the amendment, would have been contrary to the amended section. However, tax properly collected in accordance with the section prior to amendment, may not be refunded thereafter even though collection after the effective date of the amendment would have been contrary to the amended section.

Any abatement or refund is subject to existing statutory periods of limitation, which periods are not suspended or extended by the amended section.

ART. 9. *Establishment of immunity.*—The mere showing of insolvency, or that depositors have claims against segregated or other assets or earnings will not of itself secure immunity from tax collection. It must be affirmatively established to the satisfaction of the Commissioner that collection of tax will diminish the assets necessary for payment of depositors' claims. See also article 10.

Any claim of immunity under the section shall be supported by a statement, under oath or affirmation, which shall show (*a*) the total of depositors' claims outstanding, and (*b*) separately and in detail, the amount of each of the following, and the amount of depositors' claims properly chargeable against each—(1) segregated or transferred assets; (2) unsegregated assets; (3) estimated future average annual earnings and profits; (4) amount collectible from shareholders; and (5) any other resources available for payment of depositors' claims. The detail shall show the full amount of depositors' claims chargeable against each of the items (1) to (5), inclusive, even though part or all of the amount chargeable against a particular item is also chargeable against some other item or items. There shall also be filed a copy of any agreement between the bank and its depositors, and any other agreement bearing on the claim of immunity under the section.

ART. 10. *Procedure during immunity.*—As long as, pursuant to the section, any tax remains unpaid, the bank shall file with each income tax return a statement as required by article 9, in duplicate, and shall also file such additional statements as the Commissioner may require. Whether or not such additional statements shall be required, and the frequency thereof, will depend on the circumstances, including the financial status and apparent prospects of the bank, and the time which is available for assessment and collection after the bank becomes financially able to pay

taxes without diminishing the assets necessary for payment of depositors' claims.

ART. 11. *Termination of immunity.*—Immunity under the section is terminated whenever, within the statutory period of limitations as extended by the section, the tax can be collected without diminishing the assets necessary for payment of depositors' claims, including claims of new depositors secured during the period of immunity from tax collection. For the immunity to end, the assets must be sufficient to cover any remaining balance still due under the agreement and any outstanding additional deposits made by the same or other depositors subsequent to the agreement. In other words, the bar of the section, when once in force, is terminated only as, and to the extent that, collection may be made without diminishing assets available for satisfaction of all outstanding depositors' claims, regardless of when their deposits were made.

While the immunity from tax collection is for protection of depositors only, in some cases the immunity will not end until the assets are sufficient to cover indebtedness of creditors generally. This situation will exist where under applicable law the claims of general creditors are on a parity with those of depositors, so that to pay depositors in full it is necessary to pay all creditors in full.

In determining the sufficiency of the assets to satisfy the depositors' claims, shareholders' liability to the extent collectible shall be treated as available assets. See article 9. Deposit insurance payable to depositors shall not be treated as an asset of the bank and shall be disregarded in determining the sufficiency of the assets to meet the claims of depositors.

ART. 12. *Collection of tax after termination of immunity.*—(a) *General.*—If assets in excess of those necessary for payment of outstanding deposits become available, such excess assets shall be applied toward satisfaction of accumulated outstanding taxes, collectible under the section, and not barred by the statute of limitations. But see article 5. Where sufficient assets are available, statutory interest shall be collected with the tax. Generally, unless the interests of the United States will be jeopardized thereby, it will be sufficient if the amount available for payment of collectible taxes without diminishing assets necessary for payment of depositors, is determined and paid by the taxpayer each time a Federal income tax return is filed. However, assessments and collections may be made at such other times as the collector or Commissioner shall find appropriate and necessary to protect the interests of the United States.

(b) *Tax due before the effective date of the amendment.*—The section does not permit assessment or reassessment or collection of tax properly abated or refunded pursuant to the section on or before May 28, 1938. Tax due on or before that date, and not so abated or refunded, and still outstanding on the said date, is within the provisions of the amended section and collectibility is determinable in accordance with the amended section the same as in the case of tax due after such date. Accordingly, a tax due prior to the effective date of the amendment and then collectible under the section may not be assessed or collected thereafter if such assessment or collection would be contrary to the section as amended. See article 8.

If the statutory period for assessment or collection had expired before the effective date of amendment, the section does not revive it. Accordingly, in such situation the tax is not collectible under the amended section, regardless of the bank's financial condition.

ART. 13. *Social security taxes.*—These regulations do not relate to social security taxes, since the immunity granted by the amended section does not apply to taxes imposed by the Social Security Act.

ART. 14. *Authority for regulations.*—These regulations are issued under authority of section 3447, Revised Statutes of the United States.

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved January 16, 1939.

JOHN W. HANES,
Acting Secretary of the Treasury.

Inspection of Returns

Treasury Decision 4873—Inspection of Returns

Regulations governing the inspection of returns of individuals, partnerships, estates, trusts, corporations, associations, joint-stock companies, and insurance companies, made pursuant to the requirements of the Revenue Act of 1938; the Revenue Act of 1936; the Revenue Act of 1935; Title IX of the Social Security Act; the Revenue Act of 1934; sections 215 and 216, Title II, National Industrial Recovery Act; the Revenue Act of 1932, as amended by section 218, Title II of the National Industrial Recovery Act; Title I of the Revenue Act of 1932; Title I of the Revenue Act of 1928; Title II of the Revenue Act of 1926; and income, profits, and capital stock tax returns under the prior Revenue Acts, or under any such Act as amended.

Collectors of Internal Revenue and Others Concerned:

PARAGRAPH A. Section 55 (Title I) of the Revenue Act of 1938 provides in part:

(a) Returns made under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926; and all returns made under this Act shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

PAR. B. Section 409 (Title IA) of the Revenue Act of 1938 (relating to surtax on personal holding companies) provides:

All provisions of law (including penalties) applicable in respect of the taxes imposed by Title I, shall insofar as not inconsistent with this title, be applicable in respect of the tax imposed by this title, except that the provisions of section 131 shall not be applicable.

PAR. C. Section 601 (Title III) of the Revenue Act of 1938 (relating to capital stock tax) provides in part:

(e) Returns required to be filed for the purpose of the tax imposed by this section shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

PAR. D. Section 602 (Title III) of the Revenue Act of 1938 (relating to excess-profits tax) provides in part:

(c) All provisions of law (including penalties) applicable in respect of the taxes imposed by Title I of this Act shall, insofar as not inconsistent with this section, be applicable in respect of the tax imposed by this section, except that the provisions of section 131 of that title shall not be applicable.

PAR. E. Section 55 (Title I) of the Revenue Act of 1936 provides in part:

(a) Returns made under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926; and all returns made under this Act shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

PAR. F. Section 351 (Title IA) of the Revenue Act of 1936 (relating to surtax on personal holding companies) provides in part:

(c) *Administrative provisions.*—All provisions of law (including penalties) applicable in respect of the taxes imposed by Title I of this Act, shall insofar as not inconsistent with this section, be applicable in respect of the tax imposed by this section * * *.

PAR. G. Section 503 (Title III) of the Revenue Act of 1936 (relating to tax on unjust enrichment) provides in part:

(a) All provisions of law (including penalties) applicable with respect to taxes imposed by Title I of this Act, shall, insofar as not inconsistent with this title, be applicable with respect to the taxes imposed by this title * * *.

PAR. H. Section 105 (Title I) of the Revenue Act of 1935 (relating to capital stock tax) provides in part:

(e) Returns required to be filed for the purpose of the tax imposed by this section shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

PAR. I. Section 106 (Title I) of the Revenue Act of 1935 (relating to excess-profits tax) provides in part:

(c) All provisions of law (including penalties) applicable in respect of the taxes imposed by Title I of the Revenue Act of 1934, as amended, shall, insofar as not inconsistent with this section, be applicable in respect of the tax imposed by this section, * * *.

PAR. J. Section 905 (Title IX) of the Social Security Act (relating to tax on employers of eight or more) provides in part:

(c) Returns filed under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

PAR. K. Section 55 (Title I) of the Revenue Act of 1934, as amended by the Act approved April 19, 1935 (Public, No. 40, Seventy-fourth Congress, first session), provides in part:

(a) Returns made under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926; and all returns made under this Act shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

PAR. L. Section 351 (Title IA) of the Revenue Act of 1934 (relating to surtax on personal holding companies) provides in part:

(c) *Administrative provisions.*—All provisions of law (including penalties) applicable in respect of the taxes imposed by Title I of this Act, shall, insofar as not inconsistent with this section, be applicable in respect of the tax imposed by this section, * * *.

PAR. M. Section 701 (Title V) of the Revenue Act of 1934 (relating to capital stock tax) provides in part:

(e) Returns required to be filed for the purpose of the tax imposed by this section shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

PAR. N. Section 702 (Title V) of the Revenue Act of 1934 (relating to excess-profits tax) provides in part:

(b) All provisions of law (including penalties) applicable in respect of the taxes imposed by Title I of this Act, shall, insofar as not inconsistent with this section, be applicable in respect of the tax imposed by this section, * * *.

PAR. O. Section 55 (Title I) of the Revenue Act of 1932, as amended by section 218 (h), Title II, of the National Industrial Recovery Act, approved June 16, 1933, provides:

Returns made under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926; and all returns made under this Act after the date of enactment of the National Industrial Recovery Act shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

PAR. P. Section 215, Title II, of the National Industrial Recovery Act (relating to capital stock tax) provides in part:

(e) Returns required to be filed for the purpose of the tax imposed by this section shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

PAR. Q. Section 216, Title II, of the National Industrial Recovery Act (relating to excess-profits tax) provides in part:

(b) The tax imposed by this section shall be assessed, collected, and paid in the same manner, and shall be subject to the same provisions of law (including penalties), as the taxes imposed by Title I of the Revenue Act of 1932.

PAR. R. Section 55, Title I, of the Revenue Act of 1932 provides:

Returns made under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

PAR. S. Section 55, Title I, of the Revenue Act of 1928 provides:

Returns made under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

PAR. T. Section 257, Title II, of the Revenue Act of 1926, provides in part:

(a) Returns upon which the tax has been determined by the Commissioner shall constitute public records; but, except as hereinafter provided in this section and section 1203, they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary and approved by the President.

Pursuant to the above-quoted provisions of law, it is hereby ordered that the returns of individuals, partnerships, estates, trusts, corporations, associations, joint-stock companies, and insurance companies, made pursuant to the requirements of the Revenue Act of 1938; the Revenue Act of 1936; the Revenue Act of 1935; Title IX of the Social Security Act; the Revenue Act of 1934; sections 215 and 216, Title II, National Industrial Recovery Act; the Revenue Act of 1932, as amended by section 218, Title II of the National Industrial Recovery Act; Title I of the Revenue Act of 1932; Title I of the Revenue Act of 1928; Title II of the Revenue Act of 1926; and income, profits, and capital stock tax returns under the prior Revenue Acts, or under any such Act as amended, shall be open to inspection in accordance and upon compliance with the following rules and regulations.

PART I

INCOME PROFITS, AND CAPITAL STOCK TAX RETURNS AND RETURNS UNDER TITLE IX OF THE SOCIAL SECURITY ACT

ARTICLE 1. *Return.*—The word "return" when used in Part I of these regulations shall include only income and profits tax returns; special excise tax returns of corporations made pursuant to section 1000 of Title X of each of the Revenue Acts of 1918 and 1921 and section 700 of Title VII of the Revenue Act of 1924; capital stock tax returns made pursuant to section 215 of Title II of the National Industrial Recovery Act, section 701 of Title V of the Revenue Act of 1934, section 105 of the Revenue Act of 1935, and section 601 of the Revenue Act of 1938; and returns under Title IX of the Social Security Act. Any other word or term used in these regulations which is defined by the Revenue Acts, the National Industrial Recovery Act, or the Social Security Act, shall be given the respective definition contained in the Act under which the particular return is made.

ART. 2. *Corporation.*—The word "corporation" when used in these regulations includes associations, joint-stock companies, and insurance companies.

ART. 3. *Partnership.*—The word "partnership" when used in these regulations includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of the income tax laws, a trust or estate or a corporation.

ART. 4. *Stock.*—The word "stock" includes the shares in an association, joint-stock company, or insurance company; and the word "shareholder" includes a member in an association, joint-stock company, or insurance company.

ART. 5. *Return of individual.*—The return of an individual shall be open to inspection (*a*) by the person who made the return, or by his duly constituted attorney in fact; (*b*) if the maker of the return has died, or become legally incompetent, by the administrator, executor, trustee, or guardian of his estate, or by the duly constituted attorney in fact of such administrator, executor, trustee, or guardian; (*c*) in the discretion of the Commissioner of Internal Revenue, by any heir at law, next of kin, or beneficiary under the will, of such deceased person, or by the duly constituted attorney in fact of such heir at law, next of kin, or beneficiary, upon a showing that such heir at law, next of kin, or beneficiary, has a material interest which will be affected by information contained in the return; (*d*) as to returns under Title IX of the Social Security Act in the discretion of the Commissioner and at such time and in such manner as the Commissioner may prescribe for the inspection, by an officer of any State having a law certified to the Secretary of the Treasury by the Social Security Board as having been approved in accordance with section 903 of the Social Security Act, upon written application signed by the governor of such State under the seal of the State, designating the officer to make the inspection and

showing that such inspection is solely for purposes of administering such State law; and (*e*) as to returns for any taxable year begun prior to January 1, 1935, in the discretion of the Commissioner of Internal Revenue, and at such time and in such manner as the Commissioner may prescribe for the inspection, by an officer or employee of any State having a law imposing an income tax upon the individual, or a tax upon intangible property owned by the individual, measured by the income derived therefrom, upon written application signed by the governor of such State under the seal of the State, designating the person to make the inspection and showing that the inspection is solely for such State income or intangible property tax purposes. With respect to inspection on behalf of States, or political subdivisions thereof, of income returns for taxable years beginning on or after January 1, 1935, see articles 55 (b)–1 to 55 (b)–4, inclusive, of Regulations 86, as substituted by Treasury Decision 4626 (C. B. XV–1, 61, 71), and articles 55 (b)–1 to 55 (b)–4, inclusive, of Regulations 94, both as amended by Treasury Decision 4732 (C. B. 1937–1, 145); and section 55 of the Revenue Act of 1938.

ART. 6. *Joint return of husband and wife.*—A joint return of a husband and wife shall be open to inspection (*a*) by either spouse for whom the return was made, upon satisfactory evidence of such relationship being furnished, or by his or her duly constituted attorney in fact; (*b*) if either spouse has died, or become legally incompetent, by the administrator, executor, trustee, or guardian of his or her estate, or by the duly constituted attorney in fact of such administrator, executor, trustee, or guardian; (*c*) in the discretion of the Commissioner of Internal Revenue, by any heir at law, next of kin, or beneficiary under the will, of such deceased spouse, or by the duly constituted attorney in fact of such heir at law, next of kin, or beneficiary, upon a showing that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return; and (*d*) for any taxable year begun prior to January 1, 1935, in the discretion of the Commissioner of Internal Revenue, and at such time and in such manner as the Commissioner may prescribe for the inspection, by an officer or employee of any State having a law imposing an income tax upon either spouse or a tax upon intangible property owned by either spouse, measured by the income derived therefrom, upon written application signed by the governor of such State under the seal of the State, designating the person to make the inspection and showing that the inspection is solely for such State income or intangible property tax purposes. With respect to inspection on behalf of States or political subdivisions thereof of income returns for taxable years begining on or after January 1, 1935, see articles 55 (b)–1 to 55 (b)–4, inclusive, of Regulations 86, as substituted by Treasury Decision 4626 (C. B. XV–1, 61, 71), and articles 55 (b)–1 to 55 (b)–4, inclusive of Regulations 94, both as amended by Treasury Decision 4732 (C. B. 1937–1, 145); and section 55 of the Revenue Act of 1938.

ART. 7. *Partnership return.*—The return of a partnership shall be open to inspection (*a*) by any individual who was a member of such partnership during any part of the time covered by the return, or by his duly constituted attorney in fact, upon satisfactory evidence of such fact being furnished; (*b*) if a member of such partnership during any part of the time covered by the return has died, or become legally incompetent, by the administrator, executor, trustee or guardian, of his estate, or by the duly constituted attorney in fact of such administrator, executor, trustee, or guardian; (*c*) in the discretion of the Commissioner of Internal Revenue, by any heir at law, next of kin, or beneficiary under the will, of such deceased person, or by the duly constituted attorney in fact of such heir at law, next of kin, or beneficiary, upon a showing that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return; (*d*) as to returns under Title IX of the Social Security Act in the discretion of the Commissioner and at such time and in such manner as the Commissioner may prescribe for the inspection, by an officer of any State having a law certified to the Secretary of the Treasury by the Social Security Board as having been approved in accordance with section 903 of the Social Security Act, upon written application signed by the governor of such State under the seal of the State, designating the officer to make the inspection and showing that such inspection is solely for purposes of administering such State law; and (*e*) as to returns for any taxable year begun prior to January 1, 1935, in the discretion of the Commissioner of Internal Revenue, and at such time and in such manner as the Commissioner may prescribe for the inspection, by an officer or employee of any State having a law imposing an income tax upon the partnership or upon any member thereof in respect of income therefrom or a tax upon intangible property owned by the partnership, measured by the income derived therefrom, upon written application signed by the governor of such State under the seal of the State, designating the person to make the inspection and showing that the inspection is solely for such State income or intangible property tax purposes. With respect to inspection on behalf of States or political subdivisions thereof of income returns for taxable years beginning on or after January 1, 1935, see articles 55 (b)–1 to 55 (b)–4, inclusive, of Regulations 86, as substituted by Treasury Decision 4626 (C. B. XV–1, 61, 71), and articles 55 (b)–1 to 55 (b)–4, inclusive, of Regulations 94, both as amended by Treasury Decision 4732 (C. B. 1937–1, 145); and section 55 of the Revenue Act of 1938.

ART. 8. *Estates.*—The return of an estate shall be open to inspection (*a*) by the administrator, executor, or trustee of such estate, or by his duly constituted attorney in fact; (*b*) in the discretion of the Commissioner of Internal Revenue, by any heir at law, next of kin, or beneficiary under the will, of the deceased person for whose estate the return is made, or by the duly constituted attorney in fact of such heir at law, next of kin, or beneficiary, or if any such heir at law, next of kin, or beneficiary has died or become legally incompetent, by his administrator, executor, trustee, or guardian of his estate, or by the duly constituted attorney in fact of such administrator, executor, trustee, or guardian, upon a showing of material interest which will be affected by information contained in the return; (*c*) as to returns under Title IX of the Social Security Act in the discretion of the Commissioner and at such time and in such manner as the Commissioner may prescribe for the inspection, by an officer of any State having a law certified to the Secretary of the Treasury by the Social Security Board as having been approved in accordance with section 903 of the Social Security Act, upon written application signed by the governor of such State under the seal of the State, designating the officer to make the inspection and showing that such inspection is solely for purposes of administering such State law; and (*d*) as to returns for any taxable year begun prior to January 1, 1935, in the discretion of the Commissioner of Internal Revenue, and at such time and in such manner as the Commissioner may prescribe for the inspection, by an officer or employee of any State having a law imposing an income tax upon the estate or upon any beneficiary of the estate in respect of income therefrom, or a tax upon intangible property owned by the estate, measured by the income derived therefrom, upon written application signed by the governor of such State under the seal of the State, designating the person to make the inspection and showing that the inspection is solely for such State income or intangible property tax purposes. With respect to inspection on behalf of States or political subdivisions thereof of income returns for taxable years beginning on or after January 1, 1935, see articles 55 (b)–1 to 55 (b)–4, inclusive, of Regulations 86, as substituted by Treasury Decision 4626 (C. B. XV–1, 61, 71), and articles 55 (b)–1 to 55 (b)–4, inclusive, of Regulations 94, both as amended by Treasury Decision 4732 (C. B. 1937–1, 145); and section 55 of the Revenue Act of 1938.

ART. 9. *Trusts.*—The return of a trust shall be open to inspection (*a*) by the trustee or trustees, jointly or severally, or the duly constituted attorney in fact of such trustee or trustees; (*b*) by any individual who was a beneficiary of such trust during any part of the time covered by the return, or by his duly constituted attorney in fact, upon satisfactory evidence of such fact being furnished; (*c*) if any individual who was a beneficiary of such trust during any part of the time covered by the return has died, or become legally incompetent, by the administrator, executor, trustee, or guardian, of his estate, or by the duly constituted attorney in fact of such administrator, executor, trustee, or guardian; (*d*) in the discretion of the Commissioner of Internal Revenue, by any heir at law, next of kin, or beneficiary under the will of such deceased person, or by the duly constituted attorney in fact of such heir at law, next of kin, or beneficiary, upon a showing that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return; (*e*) as to returns under Title IX of the Social Security Act in the discretion of the Commissioner and at such time and in such manner as the Commissioner may prescribe for the inspection, by an officer of any State having a law certified to the Secretary of the Treasury by the Social Security Board as having been approved in accordance with section 903 of the Social Security Act, upon written application signed by the governor of such State under the seal of the State, designating the officer to make the inspection and showing that such inspection is solely for purposes of administering such State law; and (*f*) as to returns for any taxable year begun prior to January 1, 1935, in the discretion of the Commissioner of Internal Revenue, and at such time and in such manner as the Commissioner may prescribe for the inspection, by an officer or employee of any State having a law imposing an income tax upon the trust or upon any beneficiary of the trust in respect of income therefrom, or a tax upon intangible property owned by the trust, measured by the income derived therefrom, upon written application signed by the governor of such State under the seal of the State, designating the person to make the inspection and showing that the inspection is solely for such State income or intangible property tax purposes. With respect to inspection on behalf of States or political subdivisions thereof of income returns for taxable years beginning on or after January 1, 1935, see articles 55 (b)–1 to 55 (b)–4, inclusive, of Regulations 86, as substituted by Treasury Decision 4626 (C. B. XV–1, 61, 71), and articles 55 (b)–1 to 55 (b)–4, inclusive, of Regulations 94, both as amended by Treasury Decision 4732 (C. B. 1937–1, 145); and section 55 of the Revenue Act of 1938.

ART. 10. *Corporations.*—The return of a corporation shall be open to inspection (*a*) by any person designated by action of its board of directors, or other similar governing body, upon submission of satisfactory evidence of such action, or (*b*) by any officer or employee of such corporation upon written request to the Commissioner of Internal Revenue signed by any principal officer and attested by the secretary, or other officer under the corporate seal, if any, or (*c*) by the duly constituted attorney in fact of such corporation. The return of a corporation which has since been dissolved, shall, in the discretion of the Commissioner of Internal Revenue, be open to inspection by any person who under these regulations might have inspected the return at the date of dissolution.

Returns of corporations under Title IX of the Social Security Act, in the discretion of the Commissioner and at such time and in such manner as the Commissioner may prescribe, shall be open to inspection by an officer of any State having a law certified to the Secretary of the Treasury by the Social Security Board as having been approved in accordance with section 903 of the Social Security Act, upon written application signed by the governor of such State under the seal of the State, designating the officer to make the inspection and showing that such inspection is solely for purposes of administering such State law.

PART II

ESTATE AND GIFT TAX RETURNS FILED AFTER JUNE 16, 1933, UNDER THE REVENUE ACT OF 1932, OR UNDER THE REVENUE ACT OF 1932, AS AMENDED

Estate tax returns and notices, and gift tax returns, shall be treated as privileged communications and shall not be inspected nor their contents disclosed, except as hereinafter provided.

ARTICLE 1. Upon application to the collector, internal revenue agent in charge, or Commissioner, an estate tax return or notice may be inspected by the executor, or his successor in office, or by his duly authorized attorney in fact. Upon like application a gift tax return may be inspected by the donor or his duly authorized attorney in fact.

ART. 2. An internal revenue officer engaged in an official investigation of an estate tax or gift tax liability may disclose the returned value of any item or the amount of any specific deduction, or other limited information, if such disclosure is necessary in order to verify the same or to arrive at a correct determination of the tax. This right of disclosure, however, is limited to the purposes of the investigation, and in no case extends to such information as the amount of the estate, the amount of tax, or other general data.

ART. 3. A return or notice may be exhibited, or information contained therein may be disclosed, to an officer of any State, for official use in connection with an estate, inheritance, legacy, succession, gift, or other tax of the State, provided a like cooperation is given by the State to the Commissioner of Internal Revenue or his representatives for use in the administration of the Federal tax laws. Such officer may also be permitted to inspect schedules, lists, and other statements designed to be supplemental to or to become a part of, the original return, and other records and reports which contain information included or required by statute to be included in the return.

ART. 4. If any other person has a material interest in ascertaining any fact disclosed by the return, or in obtaining information as to the payment of the tax, he may make a written application to the Commissioner of Internal Revenue for such information, setting forth the nature of his interest and the purpose of the application. Thereupon, the Commissioner may permit an inspection of, or furnish a copy of the return, or may furnish such information as he deems advisable.

PART III

GENERAL PROVISIONS

The following provisions, unless otherwise stated, are applicable to all returns referred to in Parts I and II of these regulations.

ARTICLE 1. *Permission to inspect.*—The Commissioner of Internal Revenue, upon written application setting forth fully the reason for the request, may grant permission for the inspection of returns in accordance with these regulations.

ART. 2. *Treasury Department officials and employees.*—The officers and employees of the Treasury Department whose official duties require inspection of returns may inspect any such returns without making such written application. If the head of a bureau or office in the Treasury Department, not a part of the Internal Revenue Bureau, desires to inspect, or to have an employee in his bureau or office inspect a return, in connection with some matter officially before him, for reasons other than tax administration purposes, the inspection may, in the discretion of the Secretary, be permitted upon written application to him by the head of such bureau or office, showing in detail why the inspection is desired.

ART. 3. *Inspection by branch of Government other than Treasury Department.*—Except as provided in article 4, if the head of an executive department (other than the Treasury Department), or of any other establishment of the United States Government, desires to inspect or to have some other officer or employee of his branch of the service inspect a return in connection with some matter officially before him, the inspection may, in the discretion of the Secretary of the Treasury, be permitted upon written application to him by the head of such executive department or other Government establish-

ment. The application shall be signed by such head and shall show in detail why the inspection is desired, the name and address of the taxpayer who made the return, and the name and official designation of the person it is desired shall inspect the return. The information obtained under this article and article 2 may be used as evidence in any proceeding, conducted by or before any department or establishment of the United States, or to which the United States is a party.

ART. 4. *Inspection by Government attorneys.*—Any return shall be open to inspection by a United States attorney or by an attorney of the Department of Justice where necessary in the performance of his official duties. The request for inspection shall be in writing and, except as provided in article 7, shall be addressed to the Commissioner, and shall state the purpose for which inspection is desired. It may be signed by the Attorney General, the Assistant to the Attorney General, an Assistant Attorney General, or a United States attorney.

ART. 5. *Information returns.*—Information returns, schedules, lists, and other statements designed to be supplemental to, or to become a part of, the returns shall be subject to the same rules and regulations as to inspection as are the returns themselves. In any case where inspection of the return is authorized by these regulations, the Commissioner may, in his discretion, permit inspection of other records and reports which contain information included or required by statute to be included in the return.

ART. 6. *Place of inspection.*—Generally, returns may be inspected only in the Bureau of Internal Revenue, Washington, D. C., unless such returns are in the custody of a collector of internal revenue or internal revenue agent in charge, in which event the returns may be inspected in the office of such collector or agent in charge, but only in the presence of an internal revenue officer, designated by the collector or agent for that purpose.

ART. 7. *Application for inspection.*—Except as provided in article 3, and as hereinafter provided, all applications for permission to inspect returns must be made in writing to the Commissioner of Internal Revenue. When a return is in the custody of a collector of internal revenue or internal revenue agent in charge, such collector or revenue agent in charge, upon written application to him, is authorized to permit the inspection of such return by a United States attorney, or an attorney in the Department of Justice, or by the taxpayer or his duly authorized attorney in fact, in accordance with these regulations.

ART. 8. *Penalties.*—Section 3167, Revised Statutes, as amended by the Revenue Act of 1918, and reenacted without change by section 1115 of the Revenue Act of 1926, makes it a misdemeanor, punishable by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both, at the discretion of the court, for any person to print or publish in any manner whatever not provided by law information contained in any income return, and further provides that if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment. The penalties provided in section 3167, Revised Statutes, are applicable also to disclosure of information contained in excess-profits and capital stock tax returns and returns made under Title IX of the Social Security Act.

ART. 9. *Former regulations revoked.*—Former regulations issued with the approval of the President in respect of inspection of returns, except regulations relating to the inspection of returns by committees of Congress, regulations relating to overassessments contained in Treasury Decision 4583 (C. B. XIV–2, 318), and regulations governing the inspection of income tax returns, Form 1042B, by the Department of National Revenue, Ottawa, Canada (T. D. 4765, C. B. 1937–2, 121), are hereby revoked to the extent that they are inconsistent with this Treasury decision.

H. MORGENTHAU, JR.,
Secretary of the Treasury.

Approved November 12, 1938.

FRANKLIN D. ROOSEVELT,
The White House.

Executive Order No. 8005

AUTHORIZING THE INSPECTION OF INCOME, EXCESS-PROFITS, AND CAPITAL STOCK TAX RETURNS, ESTATE AND GIFT TAX RETURNS FILED AFTER JUNE 16, 1933, AND RETURNS UNDER TITLE IX OF THE SOCIAL SECURITY ACT

By virtue of and pursuant to the authority vested in me by section 257 (a) of the Revenue Act of 1926 (44 Stat., 9, 51); section 55 of the Revenue Act of 1928 (45 Stat., 791, 809); section 55 of the Revenue Act of 1932 (47 Stat., 169, 189), as amended by section 218 (h) of the National Industrial Recovery Act (48 Stat., 195, 209); sections 215 (e) and 216 (b) of the National Industrial Recovery Act (48 Stat., 195, 208); sections 55 (a), 701 (e), and 702 (b) of the Revenue Act of 1934 (48 Stat., 680, 698, 770); sections 105 (e) and 106 (c) of the Revenue Act of 1935 (49 Stat., 1014, 1018, 1019); section 905 of the Social Security Act (49 Stat., 620, 641); sections 55 (a), 351 (c), and 503 (a) of the Revenue Act of 1936 (49 Stat., 1648, 1671, 1733, 1738); and sections 55 (a), 409, 601 (e), and 602 (c) of the Revenue Act of 1938 (52 Stat., 447, 564, 565, 567), it is hereby ordered that (1) income, excess-profits, and capital stock tax returns made under the Revenue Act of 1938, the Revenue Act of 1936, the Revenue Act of 1935, the Revenue Act of 1934, the National Industrial Recovery Act, the Revenue Act of 1932, the Revenue Act of 1932 as amended by the National Industrial Recovery Act, and under the prior Revenue Acts, (2) estate and gift tax returns made under the Revenue Act of 1932 or the Revenue Act of 1932 as amended, and filed after June 16, 1933, (3) returns made under Title IX of the Social Security Act, and (4) returns made under any of the said Acts as amended, shall be open to inspection in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in the Treasury decision relating to the inspection of such returns, approved by me this date.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,
November 12, 1938.

Treasury Decision 4878—Inspection of Returns

Income, excess-profits, capital stock, estate, gift tax returns; returns made under Title III of the Revenue Act of 1936; and returns made under Title IX of the Social Security Act.

Use of original returns open to inspection in accordance with Treasury Decision 4873; furnishing of copies of returns; inspection of returns of corporations by State officers and shareholders; and inspection of estate and gift tax returns.

Collectors of Internal Revenue and Others Concerned:

By Executive Order dated November 12, 1938, the President ordered that income, excess-profits, and capital stock tax returns, estate and gift tax returns made under the Revenue Act of 1932 and filed after June 16, 1933, and returns made under Title IX of the Social Security Act, shall be open to inspection in accordance and upon compliance with the rules and regulations promulgated in Treasury Decision 4873 approved by the President on the same date. That Treasury decision deals with the inspection of returns in so far as inspection is permissible only upon order of the President and under regulations approved by the President. Under authority of law, and without action by the President, returns of corporations, except income and excess-profits tax returns and returns for the purpose of surtax on personal holding companies for years beginning after December 31, 1934, are open to inspection by the proper officers of any State; all returns of corporations are open to inspection by bona fide shareholders of record owning 1 percent or more of the outstanding stock; and all returns under Title III of the Revenue Act of 1936 (or copies thereof) are open to inspection by any official, body, or commission, lawfully charged with the administration of any State tax law, if the inspection is for the purpose of such administration or for the purpose of obtaining information to be furnished to local taxing authorities.

Pursuant to sections 62, 409, 601 (e), and 602 (c) of the Revenue Act of 1938, sections 62, 351 (c), and 503 (a) of the Revenue Act of 1936, sections 105 (d) and 106 (c) of the Revenue Act of 1935, sections 62, 351 (c), 701 (d), and 702 (b) of the Revenue Act of 1934, sections 62, 403, and 530 of the Revenue Act of 1932, section 62 of the Revenue Act of 1928, sections 257 and 1101 of the Revenue Act of 1926, section 905 (c) of the Social Security Act, and sections 215 (e) and 216 (b) of the National Industrial Recovery Act, the following regulations are hereby prescribed with respect to the use of original, and the furnishing of copies of, returns open to inspection in accordance with Treasury Decision 4873, or otherwise; with respect to examinations by shareholders of the returns of corporations; by State officers of returns of corporations made under the income, capital stock, or excess-profits tax provisions of the Revenue Act of 1926, the Revenue Act of 1928, the Revenue Act of 1932, sections 215 and 216 of the National Industrial Recovery Act, the Revenue Act of 1934, the Revenue Act of 1935, the Revenue Act of 1936, the Revenue Act of 1938, and under Title IX of the Social Security Act except income and excess-profits tax returns and returns for the purpose of surtax on personal holding companies for years beginning after December 31, 1934; with respect to the inspection of returns under Title III of the Revenue Act of 1936 by any official, body, or commission, lawfully charged with the administration of any State tax law; and with respect to the inspection of estate and gift tax returns made under the Revenue Act of 1932 and filed prior to June 17, 1933, and made under the Revenue Act of 1926 and under prior Revenue Acts. For inspection by State taxing officials of income returns other than returns under Title III of the Revenue Act of 1936, for any taxable year beginning after December 31, 1934, see articles 55 (b)–1 to 55 (b)–4, inclusive, of Regulations 86, as substituted by Treasury Decision 4626 (C. B. XV–1, 61, 71), and articles 55 (b)–1 to 55 (b)–4, inclusive, of Regulations 94, both as amended by Treasury Decision 4732 (C. B. 1937–1, 145) and section 55 of the Revenue Act of 1938.

PART I

INCOME AND EXCESS PROFITS TAX RETURNS, EXCEPT RETURNS UNDER TITLE III OF THE REVENUE ACT OF 1936, CAPITAL STOCK TAX RETURNS, AND RETURNS UNDER TITLE IX OF THE SOCIAL SECURITY ACT

ARTICLE 1. *Definitions.*—When used in Part I of these regulations—

(*a*) the term "return" means the original return (except a return under Title III of the Revenue Act of 1936) made for income, excess-profits, or capital stock tax purposes, or for purposes of the tax imposed by Title IX of the Social Security Act;

(*b*) the term "corporation" includes associations, joint-stock companies, and insurance companies;

(*c*) the term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of the Federal tax laws, a trust or estate or a corporation;

(*d*) the term "stock" includes shares in an association, joint-stock company, or insurance company; and the term "shareholder" includes a member in an association, joint-stock company, or insurance company.

ART. 2. *Access to returns by State officers.*—(1) The proper officers of a State are entitled as of right upon the request of its governor to have access to the returns of a corporation or to an abstract thereof, showing its name and income.

(2) the request or application of the governor must be in writing, signed by him under the seal of his State, and must show why access is desired, and the names and official positions of the officers designated to have the access. The request or application should be addressed to the Commissioner, who will set a convenient time and place for the access to the returns (or to an abstract thereof as he may determine).

(3) Access shall be given only in the office of the Commissioner, unless such returns are in the custody of a collector of internal revenue or internal revenue agent in charge, in which event the return may be inspected in the office of such collector or agent, but only in the presence of an internal revenue officer designated by the collector or agent for that purpose.

ART. 3. *Examination of returns by shareholder.*—A bona fide shareholder of record owning 1 per cent or more of the outstanding stock of a corporation shall be entitled as of right, upon making request of the Commissioner, to examine the returns of such corporation and of its subsidiaries. His request for permission to examine such returns must be made in writing, verified by affidavit, and shall show his address, the name of the corporation, the period of time covered by the return he desires to inspect, the amount of the corporation's outstanding capital stock, the number of shares owned by him, the date when he acquired them, and whether he has the beneficial as well as the record title to such shares. It shall also show that he has not acquired his shares for the purpose of the examination of the returns of the corporation. If he has acquired them for such purpose, he is not a bona fide shareholder within the meaning of the statute. The application shall be supported by satisfactory evidence showing that the applicant is a bona fide shareholder of record of the required amount of stock of the corporation. The supporting evidence may be in the form of a certificate signed by the president or vice president of the corporation and countersigned by the secretary under the corporate seal. Upon being satisfied from the evidence presented that the applicant has fully met these conditions, the Commissioner will grant the permission to examine the returns and set a convenient time and place for the examination. This privilege is personal and will be granted only to the shareholder, who can not delegate it to another. In the case of a corporation which has been dissolved, the returns may be examined by any person who would have been entitled to examine them at the date of dissolution.

ART. 4. *Penalties for disclosure of returns.*—Section 3167, Revised Statutes, as amended by the Revenue Act of 1918 and reenacted without change by section 1115 of the Revenue Act of 1926, makes it a misdemeanor punishable by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court, for any person to print or publish in any manner whatever not provided by law information contained in any income return, and further provides that if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment. The penalties provided in section 3167, Revised Statutes, are applicable also to disclosure of information contained in excess-profits and capital stock tax returns and returns made under Title IX of the Social Security Act.

PART II

RETURNS UNDER TITLE III OF THE REVENUE ACT OF 1936

ARTICLE 1. *Inspection of returns by State taxing officials.*—Original returns of taxes imposed by Title III shall be open to inspection, at convenient times and places, by any official, body, or commission lawfully charged with the administration of any State tax law, or by the representatives of such official, body, or commission designated in writing by the governor of the State, for the purpose of such administration, or for the purpose of obtaining information to be furnished to local taxing authorities, as provided in section 55 (b) (1) and (2) of the Revenue Act of 1936. Requests for permission to inspect the returns must be in writing signed by the governor under the seal of his State, and must be addressed to the Commissioner of Internal Revenue, Records Division, Washington, D. C. The request shall state (*a*) the kind of returns it is desired to inspect, (*b*) the taxable year or years covered by the returns it is desired to inspect, (*c*) the name of the official, body, or commission by whom or which the inspection is to be made, (*d*) the name of the representative of such official, body, or commission, designated to make the inspection, (*e*) by specific references, the State tax law which such official, body, or commission is charged with administering and the law under which he, she, or it is so charged, (*f*) the purpose for which the inspection is to be made, and (*g*) if the inspection is for the purpose of obtaining information to

be furnished to local taxing authorities, (1) the name of the official, body, or commission of any political subdivision of the State, lawfully charged with the administration of the tax laws of such political subdivision, if any, to whom or to which the information secured by the inspection is to be furnished, and (2) the purpose for which the information is to be used by such official, body, or commission.

ART. 2. *Examination of returns by shareholder.*—A bona fide shareholder of record owning 1 percent or more of the outstanding stock of a corporation shall be entitled as of right, upon making request of the Commissioner, to examine the returns of such corporation and of its subsidiaries. His request for permission to examine such returns shall be made in writing, verified by affidavit, and shall show his address, the name of the corporation, the period of time covered by the return he desires to inspect, the amount of the corporation's outstanding capital stock, the number of shares owned by him, the date when he acquired them, and whether he has the beneficial as well as the record title to such shares. It shall also show that he has not acquired his shares for the purpose of the examination of the returns of the corporation. If he has acquired them for such purpose, he is not a bona fide shareholder within the meaning of the statue. The application shall be supported by satisfactory evidence showing that the applicant is a bona fide shareholder of record of the required amount of stock of the corporation. The supporting evidence may be in the form of a certificate signed by the president or vice president of the corporation and countersigned by the secretary under the corporate seal. Upon being satisfied from the evidence presented that the applicant has fully met these conditions, the Commissioner will grant the permission to examine the returns and set a convenient time and place for the examination. This privilege is personal and will be granted only to the shareholder, who cannot delegate it to another. In the case of a corporation which has been dissolved, the returns may be examined by any person who would have been entitled to examine them at the date of dissolution.

PART III

ESTATE AND GIFT TAX RETURNS FILED ON OR BEFORE JUNE 16, 1933

Estate tax returns and notices, and gift tax returns, shall be treated as privileged communications and shall not be inspected nor their contents disclosed, except as follows:

ARTICLE 1. *Inspection by executor or donor.*—Upon application to the Commissioner an estate tax return or notice may be inspected by the executor, or his successor in office, or by his duly authorized attorney in fact. Upon like application a gift tax return may be inspected by the donor or by his duly authorized attorney in fact.

ART. 2. *Disclosure of information by revenue officer.*—An internal revenue officer engaged in an official investigation of an estate tax or gift tax liability may disclose the returned value of any item or the amount of any specific deduction or other limited information, if such disclosure is necessary in order to verify the same or to arrive at a correct determination of the tax. This right of disclosure, however, is limited to the purposes of the investigation, and in no case extends to such information as the amount of the estate, the amount of tax, or other general data.

ART. 3. *Inspection by State officers.*—Upon written application to the Commissioner, a return or notice may be exhibited, or information contained therein may be disclosed, to an officer of any State, for official use in connection with an estate, inheritance, legacy, succession, gift, or other tax of the State, provided a like cooperation is given by the State to the Commissioner of Internal Revenue or his representatives for use in the administration of the Federal tax laws. Such officer may also be permitted to inspect schedules, lists, and other statements designed to be supplemental to, or to become a part of, the original return, and other records and reports which contain information included or required by statute to be included in the return.

ART. 4. *Inspection by person having material interest.*—If any other person has a material interest in ascertaining any fact disclosed by the return, or in obtaining information as to the payment of the tax, he may make a written application to the Commissioner of Internal Revenue for such information, setting forth the nature of his interest and the purpose of the application. Thereupon, the Commissioner may permit an inspection of, or furnish a copy of, the return, or may furnish such information as he deems advisable.

ART. 5. *Inspection by Government attorneys.*—Returns shall be open to inspection by a United States attorney or by an attorney of the Department of Justice in the course of his official duties. The request for inspection shall be in writing and, except as provided in article 6, shall be addressed to the Commissioner, and shall state the purpose for which inspection is desired. It may be signed by the Attorney General, the Assistant to the Attorney General, an Assistant Attorney General, or a United States attorney.

ART. 6. *Returns in custody of collector or revenue agent in charge.*—If the return is in the custody of a collector or internal revenue agent in charge, such collector or agent in charge may, upon like written request made to him, permit inspection thereof by a United States Attorney or an attorney of the Department of Justice. Upon written application to him such collector or agent in charge may also permit inspection by the executor or his successor in office, or his duly authorized attorney in fact, in case of estate-tax returns, or the donor or his duly authorized attorney in fact in case of gift tax returns, in accordance with these regulations.

PART IV

GENERAL PROVISIONS

ARTICLE 1. *Use of returns in litigation.*—The return of an individual, partnership, corporation, or fiduciary, or a copy thereof, may be furnished to a United States attorney for official use in proceedings before a United States grand jury or in litigation in any court, if the United States is interested in the result, or for use in preparation for such proceedings or litigation; or to an attorney of the Department of Justice, for like use, upon written request of the Attorney General, the Assistant to the Attorney General, or an Assistant Attorney General. If a return or copy is thus furnished, it shall be limited in use to the purpose for which it is furnished and is under no condition to be made public except to the extent that publicity necessarily results from such use. The original return will be furnished only in exceptional cases, and then only if it is made to appear that the ends of justice may otherwise be defeated. Neither the original nor a copy of a return desired for use in litigation in court will be furnished if the United States Government is not interested in the result, but this provision is not a limitation on the use of copies of returns by the persons entitled thereto.

ART. 2. *Furnishing of copies of returns.*—A copy of a return may be furnished to any person who is entitled to inspect such return upon written application therefor and the submission of evidence satisfactory to the Commissioner of his right to receive the same, except that if a return is in the custody of a collector or of an internal revenue agent in charge, such collector or agent in charge may furnish a copy of such return to a United States attorney, or an attorney of the Department of Justice, or to the taxpayer or his duly authorized attorney in fact, in accordance with these regulations. Certified copies will be furnished only upon specific request therefor sent to the Commissioner at Washington.

The Commissioner may prescribe a reasonable fee for furnishing copies of returns.

ART. 3. *Supplemental documents, records and reports.*—Persons entitled to inspect returns may have access to information returns, schedules, lists, and other statements designed to be supplemental to, or to become a part of, the returns to which they are given access, and the Commissioner may, in his discretion, permit such persons to inspect other records and reports which contain

information included or required by statute to be included in the return.

ART. 4. This Treasury decision supersedes Treasury Decision 4798, approved March 25, 1938.

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved January 4, 1939.

JOHN W. HANES,
Acting Secretary of the Treasury.

Mitigation of Effect of Limitation Provisions

Treasury Decision 4856—Income Tax

REVENUE ACT OF 1938

Regulations under section 820 relating to the mitigation of the effect of limitation and other provisions in income tax cases.

To Collectors of Internal Revenue and Others Concerned:

Pursuant to section 820 of the Revenue Act of 1938, enacted May 28, 1938 (Public, No. 554, Seventy-fifth Congress, chapter 289, third session), section 3447 of the United States Revised Statutes, and other provisions of the internal revenue laws, the following regulations, with respect to the mitigation of the effect of limitation and other provisions in income tax cases, are hereby prescribed, various sections or subsections of the internal revenue laws applicable thereto being quoted in, and made a part of, such regulations:

ARTICLE 820–1. *Purpose and scope of section 820.*—Section 820 provides for correction of the effect of certain types of errors specified in section 820 (b) and articles 820 (b)–1 to 820 (b)–5, when one or more provisions of the internal revenue laws, such as the statute of limitations, would otherwise prevent such correction. Corrections are authorized under section 820 only when the Commissioner, if the correction would result in an allowance of a refund or credit for the year with respect to which the error was made, or the taxpayer, if the correction would result in an additional assessment for such year, has maintained a position inconsistent with the error. No correction is permissible unless the inconsistent position is adopted by a determination made on or after August 27, 1938. (See section 820 (a) and articles 820 (a)–1 to 820 (a)–3, inclusive, for definition of the term "determination.")

[Section 820 (a) (1) (A) of the Revenue Act of 1938]

SEC. 820. *Mitigation of effect of limitation and other provisions in income tax cases.*

(a) *Definitions.*—For the purpose of this section—

(1) *Determination.*—The term "determination under the income tax laws" means—

(A) A closing agreement made under section 606 of the Revenue Act of 1928, as amended;

* * * * *

Such term shall not include any such agreement made * * * prior to ninety days after the date of the enactment of this Act.

[Section 901 of the Revenue Act of 1938, in part]

SEC. 901. *Definitions.*

(a) When used in this Act—

(1) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(2) The term "corporation" includes associations, joint-stock companies, and insurance companies.

(3) The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this Act, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(6) The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(11) The term "Secretary" means the Secretary of the Treasury.

(12) The term "Commissioner" means the Commissioner of Internal Revenue.

(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

[Section 606 (a) and (b) of the Revenue Act of 1928, as amended by sections 801 and 802 of the Revenue Act of 1938]

SEC. 606. *Closing agreements.*

(a) *Authorization.*—The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner) is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal-revenue tax for any taxable period.

(b) *Finality of agreements.*—If such agreement is approved by the Secretary, the Under Secretary, or an Assistant Secretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

ART. 820 (a)–1. *Closing agreement as a determination.*—For the purposes of section 820, a determination may take the form of a closing agreement authorized by section 606 of the Revenue Act of 1928, as amended. Such an agreement may relate to the total tax liability of the taxpayer for a particular taxable year or years or to one or more separate items affecting such liability. If it becomes necessary or desirable to effect a determination in order to obtain or accelerate an adjustment authorized by section 820, a closing agreement may be used for such purpose whenever a taxpayer and the Government have concurred in the disposition of an item or items. A closing agreement becomes final within the meaning of section 820 on the date of its approval by the Secretary, the Under Secretary, or an Assistant Secretary.

[Section 820 (a) (1) (B) of the Revenue Act of 1938]

[SEC. 820. *Mitigation of effect of limitation and other provisions in income tax cases.*]

[(a) *Definitions.*—For the purpose of this section—

(1) *Determination.*—The term "determination under the income tax laws" means—]

(B) A decision by the Board of Tax Appeals or a judgment, decree, or other order by any court of competent jurisdiction, which has become final; * * *

* * * * *

Such term shall not include any * * * decision, judgment, decree, or order which has become final * * * prior to ninety days after the date of the enactment of this Act.

ART. 820 (a)–2. *Decision by Board or court as a determination.*—A determination may take the form of a decision by the Board of Tax Appeals or a judgment, decree, or other order by any court of competent jurisdiction, which has become final.

The date upon which a decision by the Board of Tax Appeals becomes final is prescribed in section 1005 of the Revenue Act of 1926, as amended.

The date upon which a judgment of a court becomes final must be determined upon the basis of the facts in the particular case. Ordinarily, a judgment of a United States district court becomes final upon the expiration of the time allowed for taking an appeal, if no such appeal is duly taken within such time; and a judgment of the United States Court of Claims becomes final upon the expiration of the time allowed for filing a petition for certiorari if no such petition is duly filed within such time.

[Section 820 (a) (1) (C) of the Revenue Act of 1938]

[SEC. 820. *Mitigation of effect of limitation and other provisions in income tax cases.*]

[(a) *Definitions.*—For the purpose of this section—

(1) *Determination.*—The term "determination under the income tax laws" means—]

(C) A final disposition by the Commissioner of a claim for refund. For the purposes of this section a claim for refund shall be deemed finally disposed of by the Commissioner—

(i) as to items with respect to which the claim was allowed, upon the date of allowance of refund or credit or upon the date of mailing notice of disallowance (by reason of offsetting items) of the claim for refund, and

(ii) as to items with respect to which the claim was disallowed, in whole or in part, or as to items applied by the Commissioner in reduction of the refund or credit, upon expiration of the time for instituting suit with respect thereto (unless suit is instituted prior to the expiration of such time).

Such term shall not include any * * * claim for refund finally disposed of, prior to ninety days after the date of the enactment of this Act.

ART. 820 (a)–3. *Final disposition of claim for refund as a determination.*—A determination may take the form of a final disposition of a claim for refund. Such disposition may result in a deter-

mination with respect to two classes of items, i. e., items included by the taxpayer in a claim for refund and items applied by the Commissioner to offset the alleged overpayment. The time at which a disposition in respect of a particular item becomes final may depend not only upon what action is taken with respect to that item but also upon whether the claim for refund is allowed or disallowed.

(*a*) *Items with respect to which the taxpayer's claim is allowed.*—(1) The disposition with respect to an item as to which the taxpayer's contention in the claim for refund is sustained becomes final on the date of allowance of the refund or credit if—

(i) The taxpayer's claim for refund is unqualifiedly allowed; or

(ii) The taxpayer's contention with respect to an item is sustained and with respect to other items is denied, so that the net result is an allowance of refund or credit; or

(iii) The taxpayer's contention with respect to an item is sustained, but the Commissioner applies other items to offset the amount of the alleged overpayment and the items so applied do not completely offset such amount but merely reduce it so that the net result is an allowance of refund or credit.

(2) If the taxpayer's contention in the claim for refund with respect to an item is sustained but the Commissioner applies other items to offset the amount of the alleged overpayment so that the net result is a disallowance of the claim for refund, the date of mailing, by registered mail, of the notice of disallowance (see section 3226 of the Revised Statutes, as amended) is the date of the final disposition as to the item with respect to which the taxpayer's contention is sustained.

(*b*) *Items with respect to which the taxpayer's claim is disallowed.*—The disposition with respect to an item as to which the taxpayer's contention in the claim for refund is denied becomes final upon the expiration of the time allowed by section 3226 of the Revised Statutes, as amended, for instituting suit on the claim for refund, unless suit is instituted prior to the expiration of such period, if—

(i) The taxpayer's claim for refund is unqualifiedly disallowed; or

(ii) The taxpayer's contention with respect to an item is denied and with respect to other items is sustained so that the net result is an allowance of refund or credit; or

(iii) The taxpayer's contention with respect to an item is sustained in part and denied in part. For example, if the taxpayer claims a deductible loss of $10,000 and a consequent overpayment of $2,500 and the Commissioner concedes that a deductible loss was sustained but in the amount of $5,000 only, or that a deductible loss of $10,000 was sustained, but under the Commissioner's computation the consequent overpayment is only $2,000, the disposition of the claim for refund with respect to both the allowance of the $5,000 and the disallowance of the remaining $5,000, or the allowance of the $2,000 overpayment and the denial of the $500, becomes final upon the expiration of the time for instituting suit on the claim for refund unless suit is instituted prior to the expiration of such period.

(*c*) *Items applied by the Commissioner in reduction of the refund or credit.*—If the Commissioner applies an item in reduction of the overpayment alleged in the claim for refund, and the net result is an allowance of refund or credit, the disposition with respect to the item so applied by the Commissioner becomes final upon the expiration of the time allowed by section 3226 of the Revised Statutes, as amended, for instituting suit on the claim for refund, unless suit is instituted prior to the expiration of such period. If such application of the item results in the assertion of a deficiency, such action does not constitute a final disposition by the Commissioner of a claim for refund within the meaning of section 820 (a) (1) (C) (ii) of the Act, but subsequent action taken with respect to such deficiency may result in a determination under section 820 (a) (1) (A) or (B) of the Act.

The necessity of waiting for the expiration of the 2-year period of limitations provided in section 3226 of the Revised Statutes, as amended, may be avoided in such cases as are described under (*b*) or (*c*) of this article by the use of a closing agreement to effect a determination.

[Section 820 (a) (2) and (3) of the Revenue Act of 1938]

[SEC. 820. *Mitigation of effect of limitation and other provisions in income-tax cases.*]

[(a) *Definitions.*—For the purpose of this section—]

(2) *Taxpayer.*—Notwithstanding the provisions of section 901, the term "taxpayer" means any person subject to a tax under the applicable Revenue Act.

(3) Related taxpayer.—The term "related taxpayer" means a taxpayer who, with the taxpayer with respect to whom a determination specified in subsection (b), (1), (2), (3), or (4) is made, stood, in the taxable year with respect to which the erroneous inclusion, exclusion, omission, allowance, or disallowance therein referred to was made, in one of the following relationships: (A) husband and wife; (B) grantor and fiduciary; (C) grantor and beneficiary; (D) fiduciary and beneficiary, legatee, or heir; (E) decedent and decedent's estate; or (F) partner.

ART. 820 (a)—A. *Related taxpayer.*—An adjustment in the case of the taxpayer with respect to whom the error was made may be authorized under section 820 although the determination is made with respect to a different taxpayer, provided that such taxpayers stand in one of the relationships specified in section 820 (a) (3). The concept of "related taxpayer" has application only to section 820 (b) (1), (2), (3), or (4) and does not apply to section 820 (b) (5). If such relationship exists, it is not essential that the error be with respect to a transaction possible only by reason of the existence of the relationship. For example, if the error with respect to which an adjustment is sought under section 820 grew out of an assignment of rents between taxpayer A and taxpayer B, who are partners, and the determination is with respect to taxpayer A, an adjustment with respect to taxpayer B may be permissible despite the fact that the assignment had nothing to do with the business of the partnership. The relationship need not exist throughout the entire taxable year with respect to which the error was made, but only at some time during that taxable year. For example, if a taxpayer on February 15 assigns to his fiancee the net rents of a building which the taxpayer owns, and the two are married before the end of the taxable year, an adjustment may be permissible if the determination relates to such rents despite the fact that they were not husband and wife at the time of the assignment. See article 820 (b)-8 for the requirement in certain cases that the relationship exist at the time an inconsistent position is first maintained.

[Section 820 (b) of the Revenue Act of 1938]

[SEC. 820. *Mitigation of effect of limitation and other provisions in income tax cases.*]

(b) *Circumstances of adjustment.*—When a determination under the income tax laws—

(1) Requires the inclusion in gross income of an item which was erroneously included in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer; or

(2) Allows a deduction or credit which was erroneously allowed to the taxpayer for another taxable year or to a related taxpayer; or

(3) Requires the exclusion from gross income of an item with respect to which tax was paid and which was erroneously excluded or omitted from the gross income of the taxpayer for another taxable year or from the gross income of a related taxpayer; or

(4) Allows or disallows any of the additional deductions allowable in computing the net income of estates or trusts, or requires or denies any of the inclusions in the computation of net income of beneficiaries, heirs, or legatees, specified in section 162 (b) and (c) of this Act, and corresponding sections of prior Revenue Acts, and the correlative inclusion or deduction, as the case may be, has been erroneously excluded, omitted, or included, or disallowed, omitted, or allowed, as the case may be, in respect of the related taxpayer; or

(5) Determines the basis of property for depletion, exhaustion, wear and tear, or obsolescence, or for gain or loss on a sale or exchange, and in respect of any transaction upon which such basis depends there was an erroneous inclusion in or omission from the gross income of, or an erroneous recognition or nonrecognition of gain or loss to, the taxpayer or any person who acquired title to such property in such transaction

and from whom mediately or immediately the taxpayer derived title subsequent to such transaction—

and, on the date the determination becomes final, correction of the effect of the error is prevented by the operation (whether before, on, or after the date of enactment of this Act) or any provision of the internal-revenue laws other than this section and other than section 3229 of the Revised Statutes, as amended (relating to compromises), then the effect of the error shall be corrected by an adjustment made under this section. Such adjustment shall be made only if there is adopted in the determination a position maintained by the Commissioner (in case the amount of the adjustment would be refunded or credited in the same manner as an overpayment under subsection (c)) or by the taxpayer with respect to whom the determination is made (in case the amount of the adjustment would be assessed and collected in the same manner as a deficiency under subsection (c)), which position is inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be. In case the amount of the adjustment would be assessed and collected in the same manner as a deficiency, the adjustment shall not be made with respect to a related taxpayer unless he stands in such relationship to the taxpayer at the time the latter first maintains the inconsistent position in a return, claim for refund, or petition (or amended petition) to the Board of Tax Appeals for the taxable year with respect to which the determination is made, or if such position is not so maintained, then at the time of the determination.

[Section 162 (b) and (c) of the Revenue Act of 1938]

SEC. 162. *Net income.*—The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

* * * * *

(b) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficaries [sic], and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (c) of this section in the same or any succeeding taxable year;

(c) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year, which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary.

ART. 820 (b)–0. *Circumstances of adjustment.*—Section 820 may be applied to correct the effect of an error if, on the date of the determination, correction of the effect of the error is prevented by the operation, whether before, on, or after the date of enactment of section 820, of any provision of the internal revenue laws other than section 820 and other than section 3229 of the Revised Statutes, as amended (relating to compromises). Examples of such provisions are: Sections 275, 311 (b) and (c), and 322 (b) and (d) of the Revenue Act of 1938 and the corresponding provisions of prior Revenue Acts, section 3226 of the Revised Statutes, as amended, section 610 of the Revenue Act of 1928, and section 906 (e) of the Revenue Act of 1924, as amended by section 601 of the Revenue Act of 1928 (periods of limitation); sections 272 (f) and 322 (c) of the Revenue Act of 1938 and corresponding provisions of prior Revenue Acts (effect of petition to Board of Tax Appeals on further deficiency letters and on credits or refunds); section 606 of the Revenue Act of 1928, as amended by sections 801 and 802 of the Revenue Act of 1938 (closing agreements); and sections 607, 608, and 609 of the Revenue Act of 1928 (payments, refunds or credits after period of limitation has expired).

If the tax liability for the year with respect to which the error was made has been compromised under section 3229 of the Revised Statutes, as amended, no adjustment may be made under section 820 with respect to that year.

Section 820 is not applicable if, on the date of the determination, correction of the effect of the error is permissible without recourse to such section.

The determination may be with respect to the tax imposed by Title I, Title IA, or section 602 of Title III, of the Revenue Act of 1938, and by the corresponding provisions of any prior Revenue Acts, by Title III of the Revenue Act of 1936, or by more than one of such provisions. Section 820 may be applied to correct the effect of the error only as to the tax or taxes for the year with respect to which the error was made which corresponds to the tax or taxes with respect to which the determination relates. Thus, if the determination relates to the tax imposed by Title I of the Revenue Act of 1938, the adjustment may be only with respect to the tax imposed by Title I of the Revenue Act applicable to the year with respect to which the error was made; if the determination relates to section 602 of Title III of the Revenue Act of 1938, the adjustment may be only with respect to the tax imposed by the corresponding provisions of the Revenue Act applicable to the year with respect to which the error was made.

ART. 820 (b)–1. *Double inclusion of item of gross income.*—Section 820 (b) (1) applies if the determination requires the inclusion, in a taxpayer's gross income, of an item which was erroneously included in the gross income of the same taxpayer for another taxable year or of a related taxpayer for the same or another taxable year.

Example (1): A taxpayer who keeps his books on the cash basis, erroneously included in his return for 1933 an item of accrued rent. In 1938, after the period of limitations on refunds for 1933 has expired, the Commissioner discovers that the taxpayer received this rent in 1934 and asserts a deficiency for the year 1934, which is sustained by the Board of Tax Appeals in 1941. An adjustment is authorized with respect to the year 1933. If the taxpayer had returned the rent for both 1933 and 1934 and by a determination was denied a refund claimed for 1934 on account of the rent item, a similar adjustment is authorized.

Example (2): A husband assigned to his wife salary to be earned by him in the year 1936. The wife included such salary in her separate return for that year and the husband omitted it. The Commissioner asserted a deficiency against the wife for 1936 with respect to a different item and she contested that deficiency before the Board of Tax Appeals. The wife would therefore be barred by section 322 (c) of the Revenue Act of 1936 from filing a claim for refund for 1936. Thereafter, the Commissioner asserts a deficiency against the husband on account of the omission of such salary from his return for 1936. The husband unsuccessfully contests the deficiency before the Board of Tax Appeals. An adjustment is authorized with respect to the wife's tax for 1936.

ART. 820 (b)–2. *Double allowance of a deduction or credit.*—Section 820 (b) (2) applies if the determination allows the taxpayer a deduction or credit which was erroneously allowed the same taxpayer for another taxable year or a related taxpayer for the same or another taxable year.

Example (1): A taxpayer in his return for 1935 claimed and was allowed a deduction for destruction of timber by a forest fire. Subsequently it was discovered that the forest fire occurred in 1936 rather than in 1935. After the expiration of the period of limitations for the assessment of a deficiency for 1935, the taxpayer files a claim for refund for 1936 based upon a deduction for the fire loss in that year. The Commissioner allows the claim for refund. An adjustment is authorized with respect to the year 1935.

Example (2): The beneficiary of a testamentary trust in his return for 1933 claimed, and was allowed, a deduction for depreciation of the trust property. The Commissioner asserted a deficiency against the beneficiary for 1933 with respect to a different item and final decision of the Board of Tax Appeals was rendered in 1935, so that the Commissioner was thereafter barred by section 272 (f) of the Revenue Act of 1932 from asserting a further deficiency against the beneficiary for 1933. The trustee thereafter filed a timely refund claim contending that under the terms of the will the trust, and not the beneficiary, was entitled to the allowance for depreciation. The court in

1939 sustains the refund claim. An adjustment is authorized with respect to the beneficiary's tax for 1933.

ART. 820 (b)-3. *Erroneous exclusion of item of gross income with respect to which tax was paid.*—Section 820 (b) (3) applies if the determination requires the exclusion, from a taxpayer's gross income, of an item with respect to which tax was paid and which was erroneously excluded or omitted from the gross income of the same taxpayer for another taxable year or of a related taxpayer for the same or another taxable year.

Example (1): A taxpayer received payments in 1936 under a contract for the performance of services and included the payments in his return for that year. A closing agreement was thereafter made with respect to the tax liability of the taxpayer for 1935. The taxpayer subsequently filed a claim for refund for the year 1936, asserting that he kept his books on the accrual basis and that, as the payments had accrued in 1935, they were properly taxable in that year. The claim for refund is allowed in 1939. An adjustment is authorized with respect to the year 1935. If the taxpayer had not included the payments in any return and the Commissioner had asserted a deficiency for 1936 with respect to the payments, and the deficiency is not sustained by the Board of Tax Appeals in its final decision in 1940, no adjustment is authorized with respect to the year 1935. Although the determination requires the exclusion of the item from gross income, no tax had been paid with respect thereto. If the taxpayer, however, had paid the deficiency and thereafter successfully contested it before the Board or successfully sued for refund in court, an adjustment is authorized.

Example (2): A father and son conducted a partnership business, each being entitled to one-half of the net profits. The father included the entire net income of the partnership in his return for 1933 and the son included no portion of this income in his return for that year. Shortly before the expiration of the period of limitations with respect to deficiency assessments and refund claims for both father and son for 1933, the father filed a claim for refund of that portion of his 1933 tax attributable to the half of the partnership income which should have been included in the son's return. The court sustains the claim for refund in 1940. An adjustment is authorized with respect to the son's tax for 1933.

ART. 820 (b)-4. *Correlative deductions and inclusions specified in section 162 (b) and (c), Revenue Act of 1938, and corresponding provisions of prior Revenue Acts.*—(a) Section 820 (b) (4) applies if the determination relates to the additional deduction specified in section 162 (b) and (c) of the Revenue Act of 1938, or the corresponding provisions of a prior Revenue Act, for amounts distributable to the beneficiaries, heirs, or legatees of an estate or trust, and such determination requires:

(1) The allowance to the estate or trust of such additional deduction when such amounts have been erroneously omitted or excluded from the income of the beneficiaries, heirs or legatees;

(2) The inclusion of such amounts in the income of the beneficiaries, heirs, or legatees when such additional deduction has been erroneously disallowed to or omitted by the estate or trust;

(3) The disallowance to an estate or trust of such additional deduction when such amounts have been erroneously included in the income of the beneficiaries, heirs, or legatees; or

(4) The exclusion of such amounts from the income of the beneficiaries, heirs, or legatees when such additional deduction has been erroneously allowed to the estate or trust.

The provisions of (a) (1) of this article may be illustrated as follows:

Example: For the taxable year 1935, a trustee, directed by the trust instrument to accumulate the trust income, made no distribution to the beneficiary and returned the entire net income as taxable to the trust. Accordingly, the beneficiary did not include the trust income in his return for the year 1935. In 1937 a State court held invalid the clause directing accumulation. In 1939 the trustee, relying upon the court decision, files a claim for refund of the tax paid on behalf of the trust for the year 1935. The claim is sustained by the court in 1941, after the expiration of the period of limitations upon deficiency assessments against the beneficiary for the year 1935. An adjustment is authorized with respect to the beneficiary's tax for the year 1935.

The provisions of (a) (2) of this article may be illustrated as follows:

Example: Assume the same facts as in the example under (a) (1) except that, instead of the trustee's filing a refund claim, the Commissioner, relying upon the decision of the State court, asserts a deficiency against the beneficiary for 1935. The deficiency is sustained by final decision of the Board of Tax Appeals in 1941, after the expiration of the period for filing claim for refund on behalf of the trust for 1935. An adjustment is authorized with respect to the trust for the year 1935.

The provisions of (a) (3) of this article may be illustrated as follows:

Example: A trustee claimed in the return for 1935 a deduction for income distributed to the beneficiary. The income was included by the beneficiary in his return for 1935. In 1939 the Commissioner asserts a deficiency against the trust on the ground that the amount distributed to the beneficiary represented a charge against the corpus of the trust and did not constitute a distribution of income. The deficiency is sustained by final decision of the Board of Tax Appeals in 1941, after the expiration of the period for filing claims for refund by the beneficiary for 1935. An adjustment is authorized with respect to the beneficiary's tax for the year 1935.

The provisions of (a) (4) of this article may be illustrated as follows:

Example: Assume the same facts as in the example under (a) (3), except that, instead of the Commissioner's asserting a deficiency, the beneficiary files a refund claim for 1935 on the same ground. The claim is sustained by the court in 1941, after the expiration of the period of limitations upon deficiency assessments against the trust for 1935. An adjustment is authorized with respect to the trust for the year 1935.

ART. 820 (b)-5. *Determination of basis of property in case of erroneous treatment of transaction relating to acquisition thereof.*—Section 820 (b) (5) applies if the determination establishes the basis of property for income tax purposes and in respect of the transaction upon which such basis depends there was an erroneous inclusion in or omission from gross income or an erroneous recognition or nonrecognition of gain or loss with respect to (1) the taxpayer with respect to whom the determination is made, or (2) any person who acquired title to such property in such transaction and the taxpayer with respect to whom the determination is made mediately or immediately derived title from such person subsequent to such transaction. Subsection 820 (b) (5) applies with respect to the person who acquired the property and any subsequent transferees or donees who have a substituted basis ascertained by reference to the basis in the hands of such person. No adjustment is authorized with respect to the transferor of the property in the transaction upon which the basis of the property depends, when the determination is with respect to (1) the original transferee, or (2) a subsequent transferee of such original transferee.

Example (1): In 1933 taxpayer A transferred property which had cost him $5,000 to the X Corporation in exchange for an original issue of shares of its stock having a fair market value of $10,000. In his return for 1933 taxpayer A treated the exchange as one in which gain or loss was not recognizable:

(a) In 1938 the X Corporation claims that gain should have been recognized on the exchange in 1933 and therefore the property it received had a $10,000 basis for depreciation. Its contention is confirmed by a closing agreement. No adjustment is authorized with respect to

the tax of the X Corporation for 1933, as there was no "erroneous inclusion in or omission from the gross income of, or an erroneous recognition or nonrecognition of gain or loss to" the X Corporation with respect to the exchange in 1933. Moreover no adjustment is authorized with respect to taxpayer A, as he is not the taxpayer with respect to whom the determination is made, nor does the determination relate to the property which taxpayer A acquired in the exchange in 1933, but, rather, to the property which he transferred in such exchange.

(*b*) In 1939 the X Corporation transfers the property to the Y Corporation in a tax-free exchange. In 1940 the Y Corporation sells the property and computes its profit on the basis of $10,000, which basis is sustained by the Board of Tax Appeals. No adjustment is authorized with respect to the Y Corporation or with respect to taxpayer A, for the reason stated in (*a*).

(*c*) In 1941 taxpayer A sells the stock which he had received in 1933 and claims that, as gain should have been recognized on the exchange in 1933, the basis for computing the profit on the sale is $10,000. His contention is confirmed in a closing agreement. An adjustment is authorized with respect to his tax for the year 1933, as the basis for computing gain on the sale depends upon the transaction in 1933 and in respect of that transaction there was an erroneous nonrecognition of gain to taxpayer A, "the taxpayer" with respect to whom the determination is made.

(*d*) Taxpayer A does not sell the stock but makes a gift of it to taxpayer B, who later sells the stock and claims the $10,000 basis, which contention is confirmed in a closing agreement. An adjustment is authorized with respect to the tax of taxpayer A for 1933, as the basis for computing gain on the sale by taxpayer B depends upon the transaction in 1933 and in respect of that transaction there was erroneous nonrecognition of gain to taxpayer A, the "person who acquired title to such property in such transaction and from whom * * * immediately" taxpayer B, with respect to whom the determination is made, "derived title subsequent to such transaction."

Example (2): In 1934 taxpayer A sold property acquired at a cost of $5,000 to taxpayer B for $10,000. In his return for 1934 taxpayer A failed to include the profit on such sale. In 1939 taxpayer B sells the property for $12,000 and in his return for 1939 reports a gain of $2,000 upon the sale, which is confirmed in a closing agreement. No adjustment is authorized with respect to the tax of taxpayer A for 1934, as taxpayer A is not the taxpayer with respect to whom the determination is made; nor does the determination relate to property which taxpayer A acquired in the transaction in 1934, but rather to property which he transferred in such transaction.

Example (3): In 1933 a taxpayer received as additional compensation shares of stock in a corporation but did not include any amount in his return for that year on account of the receipt of such stock. In 1938, after the expiration of the period of limitations on deficiency assessments for 1933, he sells the stock for $15,000 and reports $5,000 in his return for 1938 as profit on the sale. A deficiency is asserted by the Commissioner on the theory that the basis is zero and the recognized gain is $15,000. The Board of Tax Appeals sustains the taxpayer's contention that the transaction was erroneously treated in 1933 in that the property then had a fair market value of $10,000. An adjustment is authorized with respect to the year 1933.

Example (4): In 1933 a taxpayer received 100 shares of stock of the X Corporation having a fair market value of $5,000, in exchange for shares of stock in the Y Corporation which he had acquired at a cost of $12,000. In his return for 1933 the taxpayer treated the exchange as one in which gain or loss was not recognizable. The taxpayer sold 50 shares of the X Corporation stock in 1934 and in his return for that year treated such shares as having a $6,000 basis. In 1938 the taxpayer sells the remaining 50 shares of stock of the X Corporation for $7,500 and reports $1,500 gain in his return for 1938. After the expiration of the period of limitations on deficiency assessments and on refund claims for 1933 and 1934, the Commissioner asserts a deficiency for 1938 on the ground that the loss realized on the exchange in 1933 was erroneously treated as nonrecognizable, and that the basis for computing gain upon the sale in 1938 is $2,500, resulting in a gain of $5,000. The deficiency is sustained by the Board of Tax Appeals in 1943. An adjustment is authorized with respect to the year 1933 as to the entire $7,000 loss realized on the exchange. No adjustment is authorized with respect to the year 1934 as the basis for computing gain upon the sale of the 50 shares in 1938 does not depend upon the transaction in 1934.

ART. 820 (b)–6. *Law applicable in determination of error.*—The question whether there was an erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition is determined under the provisions of the internal revenue laws applicable with respect to the year as to which the inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be, was made. The fact that the inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be, was in pursuance of an interpretation, either judicial or administrative, accorded such provisions of the internal revenue laws at the time of such action is not necessarily determinative of this question. For example, if a later judicial decision authoritatively alters such interpretation so that such action was contrary to such provisions of the internal revenue laws as later interpreted, the inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be, is erroneous within the meaning of section 820.

ART. 820 (b)–7. *Operation dependent upon maintenance of inconsistent position—(a) Adjustments resulting in additional assessments.*—An adjustment which would result in an additional assessment is authorized only if (1) *the taxpayer*, with respect to whom the determination is made, has, in connection therewith, maintained a position which is inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be, and (2) such inconsistent position is adopted in the determination.

Example: A taxpayer in his return for 1935 claimed and was allowed a deduction for a loss arising from a casualty. After the taxpayer had filed his return for 1936 and after the period of limitations upon the assessment of a deficiency for 1935 had expired, it was discovered that the loss actually occurred in 1936. The taxpayer, therefore, filed a claim for refund for the year 1936 based upon the allowance of a deduction for the loss in that year, and the claim was allowed by the Commissioner. The taxpayer thus has maintained a position inconsistent with the allowance of the deduction for 1935 by filing a claim for refund for 1936 based upon the same deduction. As the determination—the allowance by the Commissioner of the claim for refund—adopts such inconsistent position, an adjustment is authorized for the year 1935.

An adjustment which would result in an additional assessment is not authorized if the Commissioner, and not the taxpayer, has maintained such inconsistent position.

Example: In the first example under this article, assume that the taxpayer did not file a claim for refund for 1936 but the Commissioner issued a notice of deficiency for 1936 based upon other items. The taxpayer filed a petition with the Board of Tax Appeals and the Commissioner in his answer voluntarily proposed the allowance of a deduction for the loss previously allowed for 1935. The Board took the deduction into account in its redetermination of the tax for the year 1936. In such case no adjustment would be authorized for the year 1935 as the Commissioner, and not the taxpayer, has maintained a position inconsistent with the allowance of a deduction for the loss in that year.

(b) *Adjustments resulting in refund or credit.*—An adjustment which would result in the allowance of a refund or credit is authorized only if (1) *the Commissioner*, in connection with a determination, has maintained a position which is inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be, and (2) such inconsistent position is adopted in the determination.

Example: A taxpayer who keeps his books on the cash basis erroneously included in his return for 1936 an item of accrued interest. After the period of limitations on refunds for 1936 had expired, the Commissioner asserted a deficiency for the year 1937 on the ground that the item of interest was received in 1937, and, therefore, was properly includible in gross income for that year. The taxpayer appealed to the Board of Tax Appeals, which sustained the deficiency. By asserting a deficiency for 1937 based upon the inclusion of the interest item in that year, the Commissioner has maintained a position inconsistent with the inclusion of the interest item in 1936. As the determination—the decision of the Board of Tax Appeals sustaining the deficiency—adopted such inconsistent position, an adjustment is authorized for the year 1936.

An adjustment which would result in the allowance of a refund or credit is not authorized if the taxpayer with respect to whom the determination is made, and not the Commissioner, has maintained such inconsistent position.

Example: In the first example under (b) of this article assume that the Commissioner asserted a deficiency for 1937 based upon other items for that year, but in computing the net income upon which such deficiency was based did not include the item of interest. The taxpayer appealed to the Board of Tax Appeals and in his petition asserted that the interest item should be included in gross income for 1937. The Board included the item of interest in its redetermination of the tax for the year 1937. In such case no adjustment would be authorized for 1936 as the taxpayer, and not the Commissioner, has maintained a position inconsistent with the erroneous inclusion of the item of interest in the gross income of the taxpayer for that year.

ART. 820 (b)-8. *Existence of status of related taxpayer at time of the first maintenance of an inconsistent position.*—No adjustment by way of a deficiency assessment shall be made with respect to a related taxpayer unless the relationship existed both in the taxable year with respect to which the error was made and at the time the taxpayer with respect to whom the determination is made first maintained, in the manner described in this article, the inconsistent position with respect to the taxable year to which the determination relates.

If the inconsistent position is maintained in a return, claim for refund, or petition (or amended petition) to the Board of Tax Appeals, for the taxable year in respect of which the determination is made, the requisite relationship must exist on the date of filing such document. If the inconsistent position is maintained in more than one of such documents, the requisite date is the date of filing of the document in which it was first maintained. If the inconsistent position was not thus maintained then the relationship must exist on the date of the determination, as, for example, where at the instance of the taxpayer a deduction is allowed, the right to which was not asserted in a return, claim for refund, or petition to the Board, and a determination is effected by means of a closing agreement.

[Section 820 (c) of the Revenue Act of 1938]

[SEC. 820. *Mitigation of effect of limitation and other provisions in income tax cases.*]

(c) *Method of adjustment.*—The adjustment authorized in subsection (b) shall be made by assessing and collecting, or refunding or crediting, the amount thereof, to be ascertained as provided in subsection (d), in the same manner as if it were a deficiency determined by the Commissioner with respect to the taxpayer as to whom the error was made or an overpayment claimed by such taxpayer, as the case may be, for the taxable year with respect to which the error was made, and as if on the date of the determination specified in subsection (b) one year remained before the expiration of the periods of limitation upon assessment or filing claim for refund for such taxable year.

ART. 820 (c)-1. *Method of adjustment.*—If the amount of the adjustment ascertained pursuant to section 820 (d) represents an increase in tax it is to be treated as if it were a deficiency determined by the Commissioner with respect to the taxpayer as to whom the error was made and for the taxable year with respect to which the error was made. The amount of the adjustment is thus to be assessed and collected under the law and regulations applicable to the assessment and collection of deficiencies, subject, however, to the limitations imposed by section 820 (e). Notice of deficiency, unless waived, must be issued with respect to such amount and the taxpayer may contest the deficiency before the Board of Tax Appeals or, if he chooses, may pay the deficiency and later file claim for refund. If the amount of the adjustment ascertained pursuant to section 820 (d) represents a decrease in tax, it is to be treated as if it were an overpayment claimed by the taxpayer with respect to whom the error was made for the taxable year with respect to which the error was made. Such amount may be recovered under the law and regulations applicable to overpayments of tax, subject, however, to the limitations imposed by section 820 (e). The taxpayer must file a claim for refund thereof, unless the overpayment is refunded without such claim, and if the claim is denied or not acted upon by the Commissioner within the prescribed time, the taxpayer may then file suit for refund. The amount of the adjustment treated as if it were a deficiency or an overpayment, as the case may be, will bear interest and be subject to additions to the tax to the extent provided by the internal revenue laws applicable to deficiencies and overpayments for the taxable year with respect to which the error was made.

For the purpose of the adjustment authorized by section 820, the period of limitation upon the making of an assessment or upon refund or credit for the taxable year with respect to which the error was made, as the case may be, shall be considered as if, on the date of the determination, one year remained before expiration of such period, regardless of whether or not such period had expired prior to the date of the determination. The Commissioner thus has one year from the date of the determination within which to mail a notice of deficiency in respect of the amount of the adjustment where such amount is treated as if it were a deficiency. The issuance of such notice of deficiency, in accordance with the law and regulations applicable to the assessment of deficiencies, will suspend the running of the 1-year period of limitations provided by section 820 (c). In accordance with the applicable law and regulations governing the collection of deficiencies (see section 276 (c) of this Act and the corresponding provisions of prior Revenue Acts), the period of limitation for collection of the amount of the adjustment will commence to run from the date of assessment of such amount. Similarly, the taxpayer has a period of one year from the date of the determination within which to file a claim for refund in respect of the amount of the adjustment where such adjustment is treated as if it were an overpayment. Where the amount of the adjustment is treated as if it were a deficiency and the taxpayer chooses to pay such deficiency and contest it by way of claim for refund, the period of limitation upon filing claim for refund will commence to run from the date of such payment (see section 322 (b) of the Revenue Act of 1938 and the corresponding provisions of prior Revenue Acts).

[Section 820 (d) of the Revenue Act of 1938]

[SEC. 820. *Mitigation of effect of limitation and other provisions in income tax cases.*]

(d) *Ascertainment of amount of adjustment.*—In computing the amount of an adjustment under this section there shall first be ascertained the tax previously determined for the taxable year with respect to which the error was made. The amount of the tax previously determined shall be (1) the tax shown by the taxpayer, with respect to whom the error was made, upon his return for such taxable year, increased by the amounts previously assessed (or col-

lected without assessment) as deficiencies, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or (2) if no amount was shown as the tax by such taxpayer upon his return, or if no return was made by such taxpayer, then the amounts previously assessed (or collected without assessment) as deficiencies, but such amounts previously assessed, or collected without assessment, shall be decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax. There shall then be ascertained the increase or decrease in the tax previously determined which results solely from the correct exclusion, inclusion, allowance, disallowance, recognition, or nonrecognition, of the item, inclusion, deduction, credit, gain, or loss, which was the subject of the error. The amount so ascertained (together with any amounts wrongfully collected, as additions to the tax or interest, as a result of such error) shall be the amount of the adjustment under this section.

ART. 820 (d)-1. *Ascertainment of amount of adjustment.*—The amount of the adjustment shall be ascertained as follows:

(1) The tax previously determined for the taxpayer as to whom the error was made, for the taxable year with respect to which the error was made, must first be ascertained. This may be the amount of tax shown on the taxpayer's return, but if any changes in that amount have been made they must be taken into account. In such cases the tax previously determined will be the tax shown on the return, increased by any amounts previously assessed (or collected without assessment) as deficiencies, and decreased by any amounts previously abated, credited, refunded or otherwise repaid in respect of such tax. If no amount was shown as the tax upon the return, or if no return was made, the tax previously determined will be the sum of the amounts previously assessed, or collected without assessment, as deficiencies, decreased by any amounts previously abated, credited, or otherwise repaid in respect of such tax.

The tax previously determined may consist of tax for any taxable year beginning after December 31, 1931, imposed by Title I, Title IA, section 602 of Title III, of the Revenue Act of 1938, by the corresponding provisions of prior Revenue Acts, by Title III of the Revenue Act of 1936, or by any one or more of such provisions.

(2) After the tax previously determined has been ascertained a recomputation must then be made to ascertain the increase or decrease in tax, if any, resulting from the correction of the error. The difference between the tax previously determined and the tax as recomputed after correction of the error will be the amount of the adjustment.

With the exception of the items upon which the tax previously determined was based and the item or items with respect to which the error was made, no other item shall be considered in computing the amount of the adjustment. If the treatment of any item upon which the tax previously determined was based, or if the application of any provisions of the internal revenue laws with respect to such tax, depends upon the amount of income (e. g., charitable contributions, foreign tax credit, earned income credit), readjustment in these particulars will be necessary as part of the recomputation in conformity with the change in the amount of the income which results from the correct treatment of the item or items in respect of which the error was made.

Any interest or additions to the tax collected as a result of the error shall be taken into account in determining the amount of the adjustment.

Example: For the taxable year 1936 a married man with no dependents, who kept his books on the cash receipts and disbursements basis, filed a return disclosing gross income of $42,000, deductions amounting to $12,000, and a net income of $30,000. Included among other items in the gross income were salary in the amount of $15,000 and rents accrued but not yet paid in the amount of $5,000. During the taxable year he donated $10,000 to the American Red Cross and in his return claimed a deduction of $5,294.12 on account thereof, representing the maximum deduction allowable under the 15 per cent limitation imposed by section 23 (o), Revenue Act of 1936. In computing his net income he omitted interest income amounting to $6,000 and neglected to take a deduction for interest paid in the amount of $4,500. The return disclosed a tax liability of $3,565, which was assessed and paid. After the expiration of the period of limitations upon the assessment of a deficiency or the allowance of a refund for 1936, the Commissioner included the item of rental income amounting to $5,000 in the taxpayer's gross income for the year 1937 and asserted a deficiency for that year. As a result of a final decision of the Board of Tax Appeals sustaining the deficiency for 1937, an adjustment is authorized for the year 1936. The amount of the adjustment is computed as follows:

Tax previously determined for 1936	$3,565.00
Net income for 1936 upon which tax previously determined was based	30,000.00
Less: Rents erroneously included	5,000.00
Balance	25,000.00
Adjustment for contributions (add 15 per cent of $5,000)	750.00
Net income as adjusted	25,750.00
Tax as recomputed	2,646.50
Tax previously determined	3,565.00
Difference	918.50
Amount of adjustment to be refunded or credited	918.50

In accordance with the provisions of section 820 (d), the recomputation to determine the amount of the adjustment does not take into consideration the item of $6,000 representing interest received, which was omitted from gross income, or the item of $4,500 representing interest paid, for which no deduction was allowed.

[Section 820 (e) of the Revenue Act of 1938]

[SEC. 820. *Mitigation of effect of limitation and other provisions in income tax cases.*]

(e) *Adjustment unaffected by other items, etc.*—The amount to be assessed and collected in the same manner as a deficiency, or to be refunded or credited in the same manner as an overpayment, under this section, shall not be diminished by any credit or set-off based upon any item, inclusion, deduction, credit, exemption, gain, or loss other than the one which was the subject of the error. Such amount, if paid, shall not be recovered by a claim or suit for refund or suit for erroneous refund based upon any item, inclusion, deduction, credit, exemption, gain, or loss other than the one which was the subject of the error.

ART. 820 (e)-1. *Effect of other items on amount of adjustment.*—The amount of the adjustment ascertained under section 820 (d) shall not be diminished by any credit or set-off based upon any item, inclusion, deduction, credit, exemption, or gain or loss with respect to the year as to which the error was made.

Example (1): In the example set forth in article 820 (d), if, after the amount of the adjustment has been ascertained, the taxpayer filed a refund claim for the amount thereof, the Commissioner could not diminish the amount of that claim by offsetting against it the amount of tax which should have been paid with respect to the $6,000 interest item omitted from gross income for the year 1936; nor could the court, if suit were brought on such claim for refund, offset against the amount of the adjustment the amount of tax which should have been paid with respect to such interest.

Example (2): Assume that a taxpayer included in his gross income for the year 1936 an item which should have been included in gross income for the year 1935. After expiration of the period of limitations upon the assessment of a deficiency or the allowance of a refund for 1935 the taxpayer filed a claim for refund for the year 1936 on the ground that such item was not properly includible in gross income for that year. The claim for refund was allowed by the Commissioner and as a result of such determination an adjustment was authorized under section 820 with respect to the tax for 1935. If, in such case, the Commissioner issued a notice of deficiency for the amount of the adjustment and the taxpayer contested the deficiency before the Board of Tax Appeals, the taxpayer could not in such proceeding claim an offset based upon his failure to take an allowable deduction for the year 1935; nor could the Board of Tax Appeals in its decision offset against the amount of the adjustment any overpayment for the year 1935 resulting from the failure to take such deduction.

If the Commissioner has refunded the amount of an adjustment under section 820, the amount so refunded may not subsequently be recovered by the Commissioner in a suit for erroneous refund based upon any item, inclusion, deduction, credit, exemption, gain, or loss (other than the one which was the subject of the error) with respect to the year as to which the error was made.

Example (3): In the example set forth in article 820 (d), if the Commissioner had refunded the amount of the adjustment, no part of the amount so refunded could subsequently be recovered by the Commissioner by a suit for erroneous refund based on the ground that there was no overpayment for 1936, as the taxpayer had failed to include in gross income the $6,000 item of interest received in that year.

If the Commissioner has assessed and collected the amount of an adjustment, no part thereof may be recovered by the taxpayer in any suit for refund based upon any item, inclusion, deduction, credit, exemption, gain or loss (other than the one which was the subject of the error) with respect to the year as to which the error was made.

Example (4): In example (2) in this article, if the taxpayer had paid the amount of the adjustment, he could not subsequently recover any part of such payment in a suit for refund based upon his failure to take an allowable deduction for the year 1935.

If the amount of the adjustment is considered as an overpayment, it may be credited, under the applicable law and regulations thereunder, against any income or excess-profits tax, or installment thereof, due from the taxpayer. Likewise, if the amount of the adjustment is considered as a deficiency, any overpayment by the taxpayer of income or excess-profits tax may be credited against the amount of such adjustment in accordance with the applicable law and regulations thereunder. (See section 322 of the Revenue Act of 1938 and corresponding provisions of prior Revenue Acts.) Accordingly, it may be possible in one transaction between the Commissioner and the taxpayer to settle the taxpayer's tax liability for the year with respect to which the determination is made and to make the adjustment under section 820 for the year with respect to which the error was made.

[Section 820 (f) of the Revenue Act of 1938]

[SEC. 820. *Mitigation of effect of limitation and other provisions in income tax cases.*]

(f) *No adjustment for years prior to 1932.*—No adjustment shall be made under this section in respect of any taxable year beginning prior to January 1, 1932.

ART. 820 (f)–1. *No adjustment for years prior to 1932.*—Where the year with respect to which the error was made is a taxable year beginning prior to January 1, 1932, no adjustment is authorized under section 820.

MILTON E. CARTER,
Acting Commissioner of Internal Revenue.

Approved August 23, 1938.

ROSWELL MAGILL,
Acting Secretary of the Treasury.

Excess-Profits Tax Regulations

Treasury Decision 4829—Excess-Profits Tax

Regulations relating to the excess-profits tax imposed by section 602 of the Revenue Act of 1938.

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH A. Section 601 (Title III—Capital Stock and Excess-Profits Taxes) of the Revenue Act of 1938, enacted May 28, 1938 (Public, No. 554, Seventy-fifth Congress, chapter 289, third session), provides:

SEC. 601. *Capital stock tax.*—(a) For each year ending June 30, beginning with the year ending June 30, 1938, there is hereby imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of $1 for each $1,000 of the adjusted declared value of its capital stock.

(b) For each year ending June 30, beginning with the year ending June 30, 1938, there is hereby imposed upon every foreign corporation with respect to carrying on or doing business in the United States for any part of such year an excise tax equivalent to $1 for each $1,000 of the adjusted declared value of capital employed in the transaction of its business in the United States.

(c) The taxes imposed by this section shall not apply—

(1) to any corporation enumerated in section 101 of this Act;

(2) to any insurance company subject to the tax imposed by section 201, 204, or 207 of this Act.

(d) Every corporation liable for tax under this section shall make a return under oath within one month after the close of the year with respect to which such tax is imposed to the collector for the district in which is located its principal place of business or, if it has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such return shall contain such information and be made in such manner as the Commissioner with the approval of the Secretary may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector before the expiration of the period for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time when the tax became due until paid. All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926 shall, insofar as not inconsistent with this section, be applicable in respect of the taxes imposed by this section. The Commissioner may extend the time for making the returns and paying the taxes imposed by this section, under such rules and regulations as he may prescribe with the approval of the Secretary, but no such extension shall be for more than sixty days.

(e) Returns required to be filed for the purpose of the tax imposed by this section shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

(f) (1) The adjusted declared value shall be determined with respect to three-year periods beginning with the year ending June 30, 1938, and each third year thereafter. The first year of each such three-year period, or, in case of a corporation not subject for such year to the tax imposed by this section, the first year of such three-year period for which the corporation is subject to the tax, shall constitute a "declaration year."

(2) For each declaration year the adjusted declared value shall be the value, as declared by the corporation in its return for such declaration year (which declaration of value cannot be amended), as of the close of its last income-tax taxable year ending with or prior to the close of such declaration year (or as of the date of organization in the case of a corporation having no income-tax taxable year ending with or prior to the close of such declaration year).

(3) For each year of any three-year period subsequent to the declaration year, the adjusted declared value in the case of a domestic corporation shall be the value declared in the return for the declaration year plus—

(A) the cash, and the fair market value of property, paid in for stock or shares,

(B) paid-in surplus and contributions to capital,

(C) its net income,

(D) its income wholly exempt from Federal income tax, and

(E) the amount, if any, by which the deduction for depletion exceeds the amount which would be allowable if computed without regard to discovery value or to percentage depletion, under section 114 (b) (2), (3), or (4) of this Act or a corresponding section of a later Revenue Act;

and minus—

(i) the cash, and the fair market value of property, distributed to shareholders,

(ii) the amount disallowed as a deduction by section 24 (a) (5) of this Act or a corresponding provision of a later Revenue Act, and

(iii) the excess of the deductions allowable for income tax purposes over its gross income.

(4) The adjustments provided in paragraph (3) shall be made for each income-tax taxable year included in the three-year period from the date as of which the value was declared in the return for the declaration year to the close of the last income-tax taxable year ending with or prior to the close of the year for which the tax is imposed by this section. The amount of such adjustment for each such year shall be computed (on the basis of a separate return) according to the income tax law applicable to such year.

(5) For each year of any three-year period subsequent to the declaration year, the adjusted declared value in the case of a foreign corporation shall be the value declared in the return for the declaration year adjusted (for the same income-tax taxable years as in the case of a domestic corporation), in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, to reflect increases or decreases in the capital employed in the transaction of its business in the United States.

(6) The capital-stock tax year beginning with or within an income-tax taxable year within which bankruptcy or receivership, due to insolvency, of a domestic corporation, is terminated shall constitute a declaration year. In such case the adjusted declared value for any subsequent year of the three-year period shall be determined on the basis of the value declared in the return for such declaration year.

(g) For the purpose of the tax imposed by this section there shall be allowed in the case of a corporation organized under the China Trade Act, 1922, as a credit against the adjusted declared value of its capital stock, an amount equal to the proportion of such adjusted declared value which the par value of the shares of stock of the corporation, owned on the last day of the taxable year by (1) persons resident in China, the United States, or possessions of the United States, and (2) individual citizens of the United States or China wherever resident, bears to the par value of the whole number of shares of stock of the corporation outstanding on such date. For the purposes of this subsection shares of stock of a corporation shall be considered to be owned by the person in whom the equitable right to the income from such shares is in good faith vested; and as used in this subsection the term "China" shall have the same meaning as when used in the China Trade Act, 1922.

(h) The capital stock tax imposed by section 105 of the Revenue Act of 1935, as amended, shall not apply to any taxpayer with respect to any year after the year ending June 30, 1937.

PAR. B. Section 602 (Title III) of the Revenue Act of 1938 provides:

SEC. 602. *Excess-profits tax.*—(a) If any corporation is taxable under section 601 with respect to any year ending June 30, there is hereby imposed upon its net income for the income-tax taxable year ending after the close of such year, an excess-profits tax equal to the sum of the following:

6 per centum of such portion of its net income for such income-tax taxable year as is in excess of 10 per centum and not in excess of 15 per centum of the adjusted declared value;

12 per centum of such portion of its net income for such income-tax taxable year as is in excess of 15 per centum of the adjusted declared value.

(b) The adjusted declared value shall be determined as provided in section 601 as of the close of the preceding income-tax taxable year (or as of the date of organization if it had no preceding income-tax taxable year). If the income-tax taxable year in respect of which the tax under this section is imposed is a period of less than 12 months, such adjusted declared value shall be reduced to an amount which bears the same ratio thereto as the number of months in the period bears to 12 months. For the purposes of this section the net income shall be the same as the net income for income-tax purposes for the year in respect of which the tax under this section is imposed, computed without the deduction of the tax imposed by this section, but with a credit against net income equal to the credit for dividends received provided in section 26 (b) of this Act.

(c) All provisions of law (including penalties) applicable in respect of the taxes imposed by Title I of this Act shall, insofar as not inconsistent with this section, be applicable in respect of the tax imposed by this section, except that the provisions of section 131 of that title shall not be applicable.

(d) The excess-profits tax imposed by section 106 of the Revenue Act of 1935, as amended, shall not apply to any taxpayer with respect to any income-tax taxable year ending after June 30, 1938.

PAR. C. Section 53 (Title I) of the Revenue Act of 1938 provides:

SEC. 53. *Time and place for filing returns*—(a) *Time for filing.*—(1) *General rule.*—Returns made on the basis of the calendar year shall be made on or before the 15th day of March following the close of the calendar year. Returns made on the basis of a fiscal year shall be made on or before the 15th day of the third month following the close of the fiscal year.

(2) *Extension of time.*—The Commissioner may grant a reasonable extension of time for filing returns, under such rules and regulations as he shall prescribe with the approval of the Secretary. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months.

(b) *To whom return made.*—(1) *Individuals.*—Returns (other than corporation returns) shall be made to the collector for the district in which is located the legal residence or principal place of business of the person making the return, or, if he has no legal residence or principal place of business in the United States, than to the collector at Baltimore, Maryland.

(2) *Corporations.*—Returns of corporations shall be made to the collector of the district in which is located the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in the United States, then to the collector at Baltimore, Maryland.

PAR. D. Section 145 (Title I) of the Revenue Act of 1938 provides:

SEC. 145. *Penalties.*—(a) Any person required under this title to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this title, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person required under this title to collect, account for, and pay over any tax imposed by this title, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(d) For penalties for failure to file information returns with respect to foreign personal holding companies and foreign corporations, see section 340.

PAR. E. Section 62 (Title I) of the Revenue Act of 1938 provides:

SEC. 62. *Rules and regulations.*—The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this title.

Pursuant to the above-quoted provisions and other provisions of the internal revenue laws, the following regulations are hereby prescribed with respect to the excess-profits tax imposed by the Revenue Act of 1938:

ARTICLE 1. *Definitions.*—As used in these regulations, the term—

(*a*) *"Adjusted declared value"* means in the case of a domestic corporation the adjusted declared value of its capital stock as determined under section 601 of the Revenue Act of 1938, and the regulations issued respecting the capital stock tax imposed by that section and in the case of a foreign corporation the adjusted declared value of capital employed in the transaction of its business in the United States as determined under such section and the regulations issued in reference thereto.

(*b*) *"Tax,"* except as otherwise indicated, means the excess-profits tax imposed by section 602 of the Revenue Act of 1938.

(*c*) *"Income-tax taxable year"* means the calendar year, the fiscal year ending during such calendar year, or the fractional part of a year, upon the basis of which the corporation's net income is computed and for which its income tax returns are made for Federal income tax purposes.

(*d*) *"Net income"* means (1) "net income" within the contemplation of section 21 of the Revenue Act of 1936, or (2) in the case of an income-tax taxable year governed by the Revenue Act of 1938, "net income" within the contemplation of section 21 of the Revenue Act of 1938. Neither the amount of income tax imposed by the Revenue Act of 1936 or the Revenue Act of 1938, nor the amount of the excess-profits tax imposed by the Revenue Act of 1935, as amended, or the Revenue Act of 1938, shall be deducted from net income in computing the excess-profits tax and none of the credits allowed corporations against net income for income tax purposes are applicable in respect of the excess-profits tax except the credit against net income equal to the credit for dividends received provided in section 26 (b) of the Revenue Act of 1936 and in section 26 (b) of the Revenue Act of 1938.

ART. 2. *Scope of tax.*—The excess-profits tax, imposed by section 602 of the Revenue Act of 1938, is imposed upon the net income of every corporation for each income-tax taxable year ending after the close of any year ending June 30 in respect of which the corporation is subject to the capital stock tax imposed by section 601 of that Act.

ART. 3. *Measure and rate of tax*—(*a*) *Domestic and foreign corporations.*—The tax is imposed in an amount equal to the sum of (1) 6 percent of such portion of the corporation's net income for the income-tax taxable year as is in excess of 10 percent and not in excess of 15 percent of the adjusted declared value plus (2) 12 percent of such portion of its net income for the income-tax taxable year as is in excess of 15 percent of the adjusted declared value, as of the close of the last preceding income-tax taxable year (or as of the date of organization if the corporation had no preceding income-tax taxable year).

(*b*) *Adjusted declared value.*—No variation is permitted between the adjusted declared value set forth in the corporation's capital stock tax return and the adjusted declared value set forth in its excess-profits tax return, except that in the case of an excess-profits tax return

for an income-tax taxable year which is a period of less than 12 months the adjusted declared value set forth in its capital stock tax return shall be reduced to an amount which bears the same ratio thereto as the number of months in the period bears to 12 months. The first return of a corporation covering the part of a year in which it was incorporated, or the final return of a corporation covering the part of the year in which it was dissolved, is a return for 12 months and not for a period of less than 12 months, for the purposes of this Treasury decision.

ART. 4. *Method of computation, example.*—The application of the provisions of article 3 of these regulations may be illustrated generally by the following example:

Example: The M Corporation, the income-tax taxable year of which is the calendar year, is subject to the capital stock tax imposed by section 601 of the Revenue Act of 1938 for the year ending June 30, 1938. The value declared in its capital stock tax return for the year ending June 30, 1938, of its capital stock as of the close of its preceding income-tax taxable year (the calendar year 1937) is $100,000. The net income of the corporation for the calendar year 1938, determined under the Revenue Act of 1938, is $25,000. (The net income for income-tax taxable years beginning after December 31, 1937, shall be determined under the Revenue Act of 1938.) During its taxable year the corporation received dividends from corporations subject to taxation under Title I of the Revenue Act of 1938, amounting to $5,000. The excess-profits tax for the calendar year 1938 is $990, computed as follows:

Net income for calendar year 1938	$25,000
Less:	
Credit for dividends received (85 percent of $5,000)	4,250
Balance of net income	20,750
Less:	
10 percent of the value declared in the capital stock tax return for the year ending June 30, 1938, of the capital stock as of December 31, 1937 (10 percent of $100,000)	10,000
Net income subject to excess-profits tax	10,750
Less:	
Amount taxable at 6 percent, portion of net income in excess of 10 percent and not in excess of 15 percent of the adjusted declared value of the capital stock as of December 31, 1937 ($15,000 minus $10,000)	5,000
Amount taxable at 12 percent	5,750
Excess-profits tax at 6 percent (6 percent of $5,000)	300
Excess-profits tax at 12 percent (12 percent of $5,750)	690
Total excess-profits tax ($300 plus $690)	990

ART. 5. *Returns.*—Every corporation which is subject to the capital-stock tax imposed by section 601 of the Revenue Act of 1938, for any year shall make an excess-profits tax return for each income-tax taxable year which ends after the close of the year in respect of which it is subject to such capital stock tax. There is no provision in the Revenue Act of 1938 which authorizes the making of a consolidated return by an affiliated group of corporations for the purpose of the excess-profits tax imposed by section 602 of that Act. Accordingly, every corporation which is liable for the making of an excess-profits tax return under section 602 of the Revenue Act of 1938 (for any income-tax taxable year ending after June 30, 1938), whether or not such corporation is a member of an affiliated group of corporations, must make its excess-profits tax return and compute its net income separately, without regard to the provisions of section 141 of the Revenue Act of 1938.

The excess-profits tax return shall be made within the time prescribed for making the corporation's Federal income tax return for the income-tax taxable year, and shall be made to the collector of internal revenue to whom such income tax return is required to be made.

ART. 6. *Payment of tax.*—The excess-profits tax for any income-tax taxable year shall be paid within the time prescribed for paying the Federal income tax for such taxable year.

ART. 7. *Credits against tax prohibited.*—Foreign income and profits taxes may not be credited against the excess-profits tax imposed by section 602 of the Revenue Act of 1938.

ART. 8. *Determination of tax, assessment, collection.*—The determination, assessment, and collection of the tax, and the examination of returns and claims in connection therewith, will be made under such procedure as may be prescribed from time to time by the Commissioner.

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved July 15, 1938.

ROSWELL MAGILL,
Acting Secretary of the Treasury.

[F. R. Doc. 39-450; Filed, February 7, 1939; 4:01 p. m.]

[T. D. 4885]

PRESCRIBING REGULATIONS UNDER THE INTERNAL REVENUE CODE

To Collectors of Internal Revenue and Others Concerned:

All regulations (including all Treasury Decisions), prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury, applicable under any provision of law on the date of the enactment of the Internal Revenue Code, to the extent such provision of law is superseded by the Code, are hereby prescribed under, and made applicable to, the provisions of the Code corresponding to the provision of law so superseded, insofar as any such regulation is not inconsistent with the Code.

These regulations are issued under authority of the provisions of section 3791 of the Internal Revenue Code and under such other provisions of the Code as correspond with the several provisions of law under which any regulation or Treasury Decision hereby prescribed and made applicable was issued.

GUY T. HELVERING,
Commissioner.

Approved, February 11, 1939.

H. MORGENTHAU, Jr.
Secretary of the Treasury.

[F. R. Doc. 39-518; Filed, February 11, 1939; 1:53 p. m.]

[T. D. 4886]

PRESCRIBING REGULATIONS RELATING TO TAXES ON OLEOMARGARINE, ADULTERATED BUTTER AND PROCESS OR RENOVATED BUTTER, UNDER THE INTERNAL REVENUE CODE

To Collectors of Internal Revenue and Others Concerned:

Reguations 9, revised April, 1936,[1] as amended, relating to the taxes on oleomargarine, adulterated butter, and process or renovated butter, prescribed by the Commissioner of Internal Revenue, and approved by the Secretary of the Treasury and the Secretary of Agriculture, are hereby prescribed under, and made applicable to, Chapter 16, subchapter A and subchapter B, and Chapter 27, subchapter A, Parts I and II, of the Internal Revenue Code in so far as such regulations are not inconsistent with the Code.

This Treasury Decision is issued under authority of the provisions of sections 2325 and 3791 of the Internal Revenue Code and under such other provisions of the Code as correspond with the several provisions of law under which any regulation or Treasury Decision hereby prescribed and made applicable was issued.

GUY T. HELVERING,
Commissioner.

Approved as to Treasury Department:

H. MORGENTHAU, Jr.,
Secretary of the Treasury.

Approved as to Department of Agriculture:

H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 39-519; Filed, February 11, 1939; 2:11 p. m.]

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[1] 1 F. R. 160.

TITLE 27—INTOXICATING LIQUORS

FEDERAL ALCOHOL ADMINISTRATION DIVISION

CIRCULAR LETTER PRESCRIBING FORM OF GOVERNMENT LABEL FOR DISTILLED SPIRITS (REVISED)[1]

FEBRUARY 11, 1939.

To all bottlers and importers of distilled spirits:

Pursuant to section 32 of Regulations No. 5, Relating to Labeling and Advertising of Distilled Spirits, the following form of "Government" label is hereby prescribed for all classes and types of distilled spirits.

(1) CLASS AND TYPE
(2) Alcoholic content.
(3) Net contents.
(4) Age (or storage) statement and percentages.
(5) Percentage of neutral spirits and name of commodity from which distilled.
(6) Artificial or excessive coloring or flavoring.
(7) State of distillation.

If all the mandatory information required by section 32 (c) of Regulations No. 5[2] appears on the brand label, in the manner and form prescribed by the regulations, no separate "Government" label need be used. The "Government" label, however, if used, shall be prepared in the precise form above prescribed, except that, at the option of the bottler, the statement of alcoholic content and the statement of net contents may appear on the same line, if separated by a wide space. If any of the prescribed statements, as itemized above, are not applicable to the particular product to which the label is to be affixed (such as "Artificial or excessive coloring or flavoring"), or if any such statement is not authorized by the Regulations to appear upon the label of any particular products, all references thereto shall be omitted. In the event that any such statement is omitted, however, all other statements, applicable to the particular product, shall appear in the form above prescribed, and in the order specified.

The words "Government label" or "Federal Alcohol Administration label" or similar words shall not be printed or otherwise stated on any label for distilled spirits. The label herein prescribed shall contain only the mandatory information above enumerated, and no other printed or graphic matter shall appear thereon. However, if the bottler desires to use a back label containing printed or graphic matter which does not conflict with the Regulations, the mandatory label information may be stated on such label, if it is stated either at the top or the bottom of the label in the manner and form herein prescribed and is separated by a heavy line or a wide space from all other matter appearing on such label.

[1] 1 F.R. 104.
[2] 1 F.R. 95.

PART II

Manner of Stating Mandatory Information

The mandatory information required to appear upon the "Government" label shall be stated in the following manner:

(1) *Class and type.*—(a) The class and the type of the distilled spirits shall be stated in conformity with the requirements of section 34, and in all instances in which there is required to appear upon the brand label a statement with respect to the composition or origin of the product, such statement of composition or origin shall likewise appear upon the "Government" label, in direct conjunction with the class and type designation, e. g., "Manhattan Cocktail—The distilled spirits used are all straight rye whiskey" "Branorum—A blend of 50% brandy and 50% rum" "Whiskey—A blend of 50% Irish whiskey 10 years old and 50% straight bourbon whiskey 2 years old."

(b) In the case of whiskey, and American type whiskey, produced on or after March 1, 1938, which, in whole or in part, is treated with wood chips through percolation, or otherwise, during distillation, rectification, or storage, there shall be stated in direct conjunction with the class and type designation the phrase "Colored and flavored with wood chips."

(c) In the case of "whiskey" produced in the United States on or after March 1, 1938, and stored in reused cooperage, which has been distilled at not exceeding 160° proof from a fermented mash of not less than 51% rye grain, corn grain, wheat grain, malted barley grain, or malted rye grain, respectively, there shall be stated in direct conjunction with the class and type designation, in uniform lettering not greater than one-half the size of such designation, "Distilled from Rye (or Bourbon, Wheat, Malt, or Rye Malt) Mash", as the case may be.

(2) *Alcoholic content.*—Except in the case of cordials and liqueurs, alcoholic content shall be stated in degrees of proof, as follows: "_____ proof."

In the case of cordials and liqueurs, alcoholic content may be stated by degrees of proof or percentage of volume, as follows: "_____ proof" or "_____% alcohol by volume."

(3) *Net contents.*—The net contents, unless blown in the bottle, shall be stated as follows:

If 1 pint, 1 quart, or 1 gallon, the net contents shall be so stated.

If less than a pint, the net contents shall be stated in fractions of a pint; as for example "½ pint."

If more than a pint, but less than a quart, the net contents shall be stated in fractions of a quart; as for example "⅘ quart."

If more than a quart, but less than a gallon, the net contents shall be stated in fractions of a gallon; as for example "½ gallon."

All fractions shall be expressed in their lowest denomination. If blown in a bottle, net contents need not be stated.

(4) *Age (or storage) statements, and percentages.*—(a) In the case of neutral spirits, gin, liqueurs, cordials, vodka, cocktails, gin fizzes, highballs, bitters, and specialties, age statements are prohibited.

(b) In the case of rum, brandy, cognac, Scotch whiskey, Irish whiskey, Canadian whiskey, and American straight whiskey, bottled in bond, age statements are optional. When such statements are used, they shall appear in the precise form prescribed in section 39 of Regulations No. 5.

(c) Except as provided in paragraph (b) above (and unless prohibited by section 32 (c) (10) of Regulations No. 5), there shall be stated in the case of all classes and types of whiskey the age or period of storage, and the percentages, in the precise form prescribed in section 39 of Regulations No. 5.

(d) Regulations No. 5 define the term "age" to mean "the period during which, after distillation and before bottling, distilled spirits have been kept in oak containers, charred if for a whiskey of American type other than corn whiskey, straight corn whiskey, blended corn whiskey, or a blend of straight corn whiskeys. In the case of American type whiskeys produced on or after July 1, 1936, other than corn whiskey, straight corn whiskey, blended corn whiskey, and blends of straight corn whiskey, 'age' means the period during which the whiskey has been kept in charred new oak containers."

(5) *Percentage of neutral spirits and name of commodity from which distilled.*—In the case of neutral spirits, only the name of the commodity from which distilled need be stated. Such statement shall be as follows:

Distilled from (grain / cane products / fruit)

or (Grain / Cane products / Fruit) (neutral spirits / alcohol)

In the case of gin produced by a process of continuous distillation, only the name of the commodity from which distilled need be stated. Such statement shall be as follows:

Distilled from (grain / cane products / fruit)

In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits are used therein, the percentage of such neutral spirits and the name of the commodity from which distilled shall be stated as follows:

_____% neutral spirits distilled from (grain) (cane products) (fruit) or

------% (grain) (cane products) (fruit) neutral spirits.

In the case of blended whiskey, spirit whiskey, blended Scotch type whiskey, or blended Irish type whiskey, as defined in the standards of identity, Regulations No. 5, the above statement shall appear in immediate conjunction with the required age statement.

(6) *Artificial or excessive coloring or flavoring.*—(a) The presence of beading oil in any type of whiskey shall be stated as follows: "Contains beading oil."

(b) In the case of any distilled spirits containing synthetic coloring material, or natural materials the primary contribution of which is color, as well as in the case of any distilled spirits so labeled as to convey a misleading impression that the color of the product is derived from a given source, the presence and origin of such coloring materials shall be indicated in the precise manner prescribed in section 38 (d) of Regulations No. 5.

(c) In the case of distilled spirits other than cordials, liqueurs, gin, gin fizzes, highballs, and bitters containing, in the aggregate, coloring, blending, smoothing, or flavoring materials in excess of 2½% by volume of such distilled spirits, the name and percentage by volume of each such material shall be stated, e. g., "Contains 4% sherry blending material." This statement is required regardless of whether or not the use of such materials results in a change of the class or type designation under section 22 of Regulations No. 5.

(7) *State of distillation.*—In the case of domestic whiskey and straight whiskey, if the product is not distilled in the State given in the address on the brand label, the State of distillation shall appear as follows: "Distilled in ----------" (the blank shall be filled in with the name of the State in which the whiskey is distilled).

PART III

Sample Government Label Forms

For the information and guidance of all concerned, the following are sample forms of "Government" labels for the various classes and types of distilled spirits as defined in Regulations No. 5:

(1) *Alcohol (neutral spirits).*—

[Class 1, Sec. 21, Art. II, Regulations No. 5]

Statements 1, 2, 3, and 5 of the above-prescribed "Government" label form are required to be stated. Statement 6 must appear if applicable.

Sample Form

ALCOHOL
193 proof
1 gallon
Distilled from grain

(2) *Whiskey.*—

[Class 2, Sec. 21, Art. II, Regulations No. 5]

Statements 1, 2, and 3 of the above-prescribed "Government" label form are required to be stated. Statement 4, relating to age, period of storage and percentages, must likewise appear, except where prohibited by section 32 (c) (10) of Regulations No. 5. Statements 6 and 7 must appear if applicable.

Sample Form

WHISKEY
Distilled from Rye mash
Colored and flavored with wood chips
93 proof
1 pint
This whiskey stored 6 months in reused cooperage
Distilled in Illinois

(3) *Rye whiskey, bourbon whiskey, corn whiskey, wheat whiskey, malt whiskey, rye malt whiskey.*—

[Class 2 (a), Sec. 21, Art. II, Regulations No. 5]

Statements 1, 2, and 3 of the above-prescribed "Government" label form are required to be stated. Statement 4, relating to age, period of storage and percentages, must likewise appear, except that such statement may not appear upon the label of any American rye whiskey, bourbon whiskey, wheat whiskey, malt whiskey, or rye malt whiskey, distilled on and after July 1, 1936 and prior to March 1, 1938, and stored in reused cooperage. Statements 6 and 7 of the above-prescribed "Government" label form must appear if applicable.

Sample Form

RYE WHISKEY
93 proof
1 pint
This whiskey is 9 months old
Contains beading oil
Distilled in Maryland

(4) *Straight whiskey, straight rye whiskey, straight bourbon whiskey, straight corn whiskey, straight wheat whiskey, straight malt whiskey, straight rye malt whiskey.*—

[Class 2 (b), (c), (d), (e), and (f), Sec. 21, Art. II, Regulations No. 5]

Statements 1, 2, and 3 of the above-prescribed "Government" label form are required to be stated. Statement 4 must be stated except for American bottled in bond whiskey, in which case it is optional. Statement 7 must appear if applicable.

Sample Form

STRAIGHT BOURBON WHISKEY
100 proof
1 pint
This whiskey is 2 years and 6 months old
Distilled in Pennsylvania

(5) *Blended whiskey (whiskey — a blend), blended rye whiskey (rye whiskey—a blend), blended bourbon whiskey (bourbon whiskey—a blend), blended corn whiskey (corn whiskey—a blend), blended wheat whiskey (wheat whiskey—a blend), blended malt whiskey (malt whiskey—a blend) or blended rye malt whiskey (rye malt whiskey—a blend).*—

[Class 2 (g) and (h), Sec. 21, Art. II, Regulations No. 5]

Statements 1, 2, 3, and 4 of the above-prescribed "Government" label form are required to be stated. Statements 5 and 6 must appear if applicable.

Sample Form One

BLENDED RYE WHISKEY
90 proof
1 quart
The straight whiskey in this product is 2 years old, 51% straight whiskey, 49% grain neutral spirits

Sample Form Two

BLENDED WHISKEY
Colored and flavored with wood chips
90 proof
1 quart
The straight whiskey in this product is 2 years old. 20% straight whiskey, 30% other whiskey stored 6 months in reused cooperage, 50% cane products neutral spirits

(6) *A blend of straight whiskeys (blended straight whiskeys), a blend of straight rye whiskeys (blended straight rye whiskeys), a blend of straight bourbon whiskeys (blended straight bourbon whiskeys), a blend of straight corn whiskeys (blended straight corn whiskeys), a blend of straight wheat whiskeys (blended straight wheat whiskeys), a blend of straight malt whiskeys (blended straight malt whiskeys), and a blend of straight rye malt whiskeys (blended straight rye malt whiskeys).*—

[Class 2 (i), sec. 21, Art. II, Regulations No. 5]

Statements 1, 2, 3, and 4 of the above-prescribed "Government" label form are required to be stated. Statement 6 must appear if applicable.

Sample Form

BLENDED STRAIGHT CORN WHISKEYS
95 proof
4/5 quart
The straight whiskeys in this product are 3 years or more old

(7) *Spirit whiskey.*—

[Class 2 (j), Sec. 21, Art. II, Regulations No. 5.]

Statements 1, 2, 3, 4, and 5 of the above-prescribed "Government" label form are required to be stated. Statement 6 must appear if applicable.

Sample Form

SPIRIT WHISKEY
80 proof
1 pint
The whiskey in this product is 4 months old; 10% whiskey, and 90% cane products neutral spirits
Contains beading oil

(8) *Scotch whiskey, blended Scotch whiskey (Scotch whiskey—a blend),—*

[Class 2 (k), Sec. 21, Art. II, Regulations No. 5.]

Statements 1, 2, and 3 of the above-prescribed "Government" label form are required to be stated. Statement 6 must appear if applicable. Statement 4 may, but need not, appear.

Sample Form

SCOTCH WHISKEY—A BLEND
86.8 proof
4/5 quart
10 years old

(9) *Irish whiskey, blended Irish whiskey (Irish whiskey—a blend).—*

[Class 2 (l), Sec. 21, Art. II, Regulations No. 5]

Statements 1, 2, and 3 of the above-prescribed "Government" label form are required to be stated. Statement 6 must appear if applicable. Statement 4 may, but need not, appear.

Sample Form

BLENDED IRISH WHISKEY
90 proof
4/5 quart
This whiskey is 8 years old

(10) *Canadian whiskey, blended Canadian whiskey (Canadian whiskey—a blend).—*

[Class 2 (m), Sec. 21, Art. II, Regulations No. 5]

Statements 1, 2, and 3 of the above-prescribed "Government" label form are required to be stated. Statement 6 must appear if applicable. Statement 4 may, but need not, appear.

Sample Form

CANADIAN WHISKEY
90 proof
1 pint

(11) *Blended Scotch type whiskey (Scotch type whiskey—a blend).—*

[Class 2 (n), Sec. 21, Art. II, Regulations No. 5]

Statements 1, 2, 3, and 4 of the above-prescribed "Government" label form are required to be stated. Statements 5 and 6 must appear if applicable.

Sample Form

BLENDED SCOTCH TYPE WHISKEY
86.8 proof
4/5 quart
The malt whiskey in this product is 5 years old; 50% malt whiskey, 50% grain neutral spirits

(12) *Blended Irish type whiskey (Irish type whiskey—a blend).—*

[Class 2 (o), Sec. 21, Art. II, Regulations No. 5]

Statements 1, 2, 3, and 4 of the above-prescribed "Government" label form are required to be stated. Statements 5 and 6 must appear if applicable.

Sample Form

BLENDED IRISH TYPE WHISKEY
90 proof
4/5 quart
The malt whiskey in this product is 4 years old; 50% malt whiskey, 50% other whiskey 10 months old

(13) *Distilled gin, compound gin.—*

NOTE.—This form to be used for "Dry gin", "London dry gin", "Hollands gin", "Geneva gin", "Old Tom gin", "Tom gin", and "Buchu gin", further designated as "Distilled" or "Compound", as the case may be.

[Class 3, Sec. 21, Art. II, Regulations No. 5]

Statements 1, 2, 3, and 5 of the above-prescribed "Government" label form are required to be stated. Statement 6 must appear if applicable.

Sample Form

DISTILLED DRY GIN
90 proof
1 pint
100% cane products neutral spirits

(14) *Brandy (Grape Brandy), Peach brandy, Apricot brandy, Raisin brandy, Apple brandy (Applejack), Cherry brandy, Orange brandy,* _____ (other fruit) *brandy, Cognac (Cognac brandy), Dried Peach brandy, Dried Apricot brandy, Dried Apple brandy, Dried Cherry brandy, Dried Orange brandy, and Dried* _____ (other fruit) *brandy.—*

NOTE.—Other appropriate term may be used in place of word "Dried."

[Class 4, Sec. 21, Art. II, Regulations No. 5]

Statements 1, 2, and 3 of the above-prescribed "Government" label form are required to be stated. Statement 6 must appear if applicable. Statement 4 may, but need not, appear.

Sample Form

GRAPE BRANDY
90 proof
1 pint
This brandy is 2 years old

(15) *Rum, New England rum, Puerto Rico rum, Cuba rum, Demarara rum, Barbados rum, St. Croix rum, St. Thomas rum, Virgin Islands rum, Jamaica rum, Martinique rum, Trinidad rum, Haiti rum, San Domingo rum.—*

[Class 5, Sec. 21, Art. II, Regulations No. 5]

Statements 1, 2, and 3 of the above-prescribed "Government" label form are required to be stated. Statement 6 must appear if applicable. Statement 4 may, but need not, appear.

Sample Form

RUM
90 proof
1 pint

(16) _____ (Type designation) *(Cordial) (Liqueur).—*

NOTE.—Name of cordial may be preceded by word "Dry" if added sugar and dextrose are less than 10% by weight in the finished product.

Words "Cordial" or "Liqueur" need not be stated to indicate the class of distilled spirits which in fact are cordials or liqueurs, unless the Administrator finds that without a designation of class, the type designation is one which does not clearly indicate to the consumer that the product is a cordial or liqueur. Cordials and liqueurs may not be designated as "distilled" or "compound."

[Class 6, Sec. 21, Art. II, Regulations No. 5]

Statements 1, 2, and 3 of the above-prescribed "Government" label form are required to be stated. Statement 6 must appear if applicable.

Sample Form

BLACKBERRY CORDIAL
30% alcohol by volume
1 pint
Color derived from blackberries and other fruits

PART IV

Certificates of Label Approval

Articles IV and V of Regulations No. 5 require that applications for "Certificates of label approval" be filed covering all labels affixed to domestically bottled distilled spirits, and distilled spirits imported in bottles. However, except as provided below, no applications for "Certificates of label approval" need be filed covering "Government" labels:

(1) All labels on distilled spirits imported in bottles, including "Government" labels, must be submitted for approval.

(2) All labels for domestically bottled highballs, cocktails, gin fizzes, specialty products, imitation products, and products for which no standard of identity is prescribed in Regulations No. 5, including "Government" labels on such products, must be submitted for approval.

(3) If the "Government" label on domestically bottled distilled spirits is superimposed upon another label bearing

other printed or graphic matter, such label must be submitted for approval.

[SEAL] W. S. ALEXANDER,
Administrator.

[F. R. Doc. 39-510; Filed, February 11, 1939; 12:22 p. m.]

TITLE 29—LABOR

CHAPTER V—WAGE AND HOUR DIVISION

PART 524—REGULATIONS APPLICABLE TO EMPLOYMENT OF HANDICAPPED PERSONS PURSUANT TO SECTION 14 OF THE FAIR LABOR STANDARDS ACT

The following amendments to Regulations—Part 524—(Regulations Applicable to Employment of Handicapped Persons pursuant to Section 14 of the Fair Labor Standards Act of 1938)[1] are hereby issued. The first of said amendments amends Section 524.5. The second of said amendments amends Section 524.7. The third of said amendments amends Section 524.9. Said amendments shall become effective upon my signing the original and upon publication thereof in the FEDERAL REGISTER and shall be in force and effect until repealed by regulations hereafter made and published by me.

Signed at Washington, D. C., this 8th day of February 1939.

ELMER F. ANDREWS,
Administrator.

SEC. 524.5 *Requirements for rates less than 75 per cent of applicable rate.* No wage rate shall be fixed by the Administrator or his authorized representative for a handicapped worker at less than 75 per cent of the minimum wage applicable under Section 6 unless after investigation such lesser wage rate appears to be clearly justified.*

SEC. 524.7 *Conditions for granting or denying certificates.* The descriptions of alleged handicaps must be in *detail.* Vague descriptions, such as "nervous condition", "physically incapacitated", etc., will not suffice. Furthermore, the alleged disability must be shown to be *a specific handicap for the proposed employment:* Many workers, such as watchmen, may be handicapped for *other* occupations but are *not* handicapped for the employment proposed for them.

As a general rule, no Special Certificate will be issued

(a) for a worker with temporary, or readily correctible, disabilities;

(b) for a worker alleged to be slow or inexperienced, unless he is also handicapped within the meaning of the Act and these Regulations;

(c) where age *alone* is cited as a disability for a worker under 65; (however, age in excess of 65 in and of itself does not necessarily render the worker handicapped within the meaning of the Act and these Regulations);

(d) for a worker (irrespective of handicap) whose piecework earnings are generally equal to or above the statutory minimum;

(e) where the application indicates the Special Certificate is desired in order to obtain an exemption from Section 7 of the Act (i. e., maximum hours and overtime) since the Administrator has no power to grant such an exemption under Section 14.*

SEC. 524.9. *Request for reconsideration and petition for review.* (a) Upon the submission of additional material facts an authorized representative of the Administrator may reconsider an application and may affirm, revise or reverse his former action.

(b) Any person aggrieved by the action of an authorized representative of the Administrator may within 15 days thereafter, or within such further time as the Administrator, for cause shown, may allow, file a petition for review by the Administrator of the action of the authorized representative of the Administrator and praying for such relief as is desired. If this petition is granted, all interested parties will be afforded an opportunity to be heard, either in support or in opposition to the matters prayed for in the petition, or other provision will be afforded interested parties to present their views. Should a public hearing be determined upon by the Administrator, a notice of its time, place and scope will be published in the FEDERAL REGISTER and made public by a general press release at least 5 days before the date of such hearing.

(c) Before any request or petition by any person or any proceeding for the cancellation or nullification of any Special Certificate for the employment of a handicapped worker will be considered by the Administrator or an authorized representative of the Administrator, reasonable notice of the time when and place where such petition or request is to be considered will be sent by registered mail to the handicapped worker and his employer named in such Special Certificate, at their last known address or addresses.*

[F. R. Doc. 39-523; Filed, February 13, 1939; 11:31 a. m.]

[1] 3 F. R. 2485, 2508, 2571, 2671 DI; 4 F. R. 473, 485 DI.

*(These Sections 524.5, 524.7 and 524.9, as amended February 8, 1939, issued under the authority contained in Section 14, 52 Stat. 1060).

TITLE 31—MONEY AND FINANCE: TREASURY

OFFICE OF THE SECRETARY

[T. D. 4884]

PRESCRIBING REGULATIONS UNDER THE INTERNAL REVENUE CODE

FEBRUARY 11, 1939.

To Collectors of Internal Revenue and others concerned:

All regulations (including all Treasury Decisions), prescribed by, or under authority duly delegated by, the Secretary of the Treasury, applicable under any provision of law on the date of the enactment of the Internal Revenue Code, to the extent such provision of law is superseded by the Code, are hereby prescribed under, and made applicable to, the provisions of the Code corresponding to the provision of law so superseded, insofar as any such regulation is not inconsistent with the Code.

These regulations are issued under authority of the provisions of sections 1928, 2559 and 2606 of the Internal Revenue Code and under such other provisions of the Code as correspond with the several provisions of law under which any regulation or Treasury Decision hereby prescribed and made applicable was issued.

H. MORGENTHAU, Jr.,
Secretary of the Treasury.

[F. R. Doc. 39-517; Filed, February 11, 1939; 1:53 p. m.]

[T. D. 4887]

PRESCRIBING REGULATIONS UNDER THE INTERNAL REVENUE CODE

To Collectors of Internal Revenue and Others Concerned:

Regulations 85, as amended, issued under the provisions of section 8 of the Silver Purchase Act of 1934, are hereby prescribed under, and made applicable to, the provisions of the Internal Revenue Code corresponding to the provisions of said section of the Silver Purchase Act of 1934 superseded by the Code, namely section 1805 of the Code, insofar as such regulations are not inconsistent with the Code.

These regulations are issued under authority of the provisions of section 1805 of the Internal Revenue Code and under such other provisions of the Code as correspond with the several provisions of law under which any regulation or Treasury Decision hereby prescribed and made applicable was issued.

[SEAL] H. MORGENTHAU, Jr.,
Secretary of the Treasury.

Approved:

FRANKLIN D ROOSEVELT,
February 11, 1939.

[F. R. Doc. 39-536; Filed, February 13, 1939; 12:55 p. m.]

TITLE 42—PUBLIC HEALTH AND EDUCATION

PUBLIC HEALTH SERVICE

AMENDMENT TO REGULATIONS GOVERNING THE ADMISSION OF PERSONS TO UNITED STATES NARCOTIC FARMS

FEBRUARY 6, 1939.

Pursuant to the authority contained in section 6 of the Act approved January 19, 1929, 45 Stat. 1086 (U. S. C., title 21, sec. 226), paragraph 4 of the Regulations Governing the Admission of Persons to

United States Narcotic Farms, approved by the Secretary of the Treasury January 3, 1935, is hereby amended to read as follows:

4. A prisoner shall be admitted to a narcotic farm for treatment and confinement therein, upon presentation to the medical officer in charge of such farm of a copy of the judgment and commitment, showing the conviction, sentence of confinement and commitment of the prisoner, when the authority vested with the power to designate the place of confinement, or the representative of such authority, has designated such narcotic farm as the place of confinement of such prisoner. Such copy of the judgment and commitment shall be supplemented by a certificate, executed by the prosecuting officer or probation officer after conviction and sentence, on a form prescribed by the Surgeon General, stating his belief that the convicted person is an addict, his reasons for such belief, and any pertinent facts bearing on such addiction, together with the nature of the crime or charge of which convicted.

[SEAL] STEPHEN B. GIBBONS,
Acting Secretary of the Treasury.

[F. R. Doc. 39-509; Filed, February 11, 1939; 11:32 a. m.]

TITLE 49—TRANSPORTATION AND RAILROADS

INTERSTATE COMMERCE COMMISSION

[No. 3666]

IN THE MATTER OF REGULATIONS FOR TRANSPORTATION OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES

APPLICATION FOR AUTHORITY TO CONSTRUCT FOR EXPERIMENTAL SERVICE IN THE TRANSPORTATION OF PETROLEUM PRODUCTS A TOTAL OF FIFTY TANK-CAR TANKS FABRICATED BY FUSION WELDING GRANTED

Supplemental Report[1]

[Decided February 7, 1939]

In our several prior reports we granted upon applications therein considered authority to build and use for experimental service in the transportation of dangerous articles other than explosives a total of 527 tank cars to be equipped with tanks fabricated by fusion welding but otherwise conforming to I. C. C. shipping container specifications.

By two applications of the American Car and Foundry Company dated January 31, 1938, recommended August 11, 1938, by the mechanical division, Association of American Railroads, for our approval, we are asked to authorize the construction and use of a total of fifty further cars, twenty-five each of I. C. C. shipping container specification 105A300 and 105A400 type for tank cars, meeting current requirements, except that tanks will be fabricated by fusion welding instead of forge welding.

In support of previous application for authority for test cars for petroleum products, granted December 30, 1937, and reported at 225 I. C. C. 607, the following appears:

Applicant states that the various features of designs of cars to be constructed under the application have been passed upon as satisfactory by the Association, construction will conform to all effective requirements; and of the total of one hundred twenty-five fusion welded cars authorized in response to its several applications, ninety-four are in service and the remainder will be promptly employed. Applicant further states that service trials and periodical inspections recently completed show cars in use to be in first-class condition after 897 trips over a total of 808,948 miles. The Bureau of Explosives and the Association recommend for favorable action the applications considered herein.

Applications and accompanying drawings for the additional fifty cars show that they will be constructed and used in accordance with the authorities previously granted and the effective regulations.

Upon further consideration of the record and in the light of added facts disclosed in the applications, the construction and use of a total of fifty additional tanks of tank cars, twenty-five each of specification 105A300 and 105A400 type, is forthwith authorized, provided that tanks may be fusion welded instead of forge welded, and must be constructed and marked in compliance with proposed revised I. C. C. specifications 105A300W and 105A400W, respectively, filed as an exhibit at the hearing herein and referred to in our prior reports; cars to be used in further service tests in the transportation of petroleum products.

In all other respects the regulations for the transportation of dangerous articles herein referred to are and shall remain in full force and effect.

Owners or operators of cars, where construction is authorized herein, shall make semiannual inspection of the tanks and report their condition to the same parties as receive reports required by respective I. C. C. specifications.

By the Commission, Commissioner McManamy.

[SEAL] W. P. BARTEL,
Secretary.

[F. R. Doc. 39-522; Filed, February 13, 1939; 11:03 a. m.]

[1] Under the authority of section 17 (6) of the Interstate Commerce Act, the above entitled matter was referred by the Commission to Commissioner McManamy for consideration and disposition.

Notices

DEPARTMENT OF AGRICULTURE.

Agricultural Adjustment Administration.

[SRB-301—Sherman County, Texas]

1939 SHERMAN COUNTY, TEXAS, AGRICULTURAL CONSERVATION PROGRAM

SOUTHERN REGION BULLETIN 301

Pursuant to the authority vested in the Secretary of Agriculture under sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act, as amended, and in connection with the effectuation of the purposes of section 7 (a) of said Act in 1939, payments and grants of aid will be made for participation in the 1939 Sherman County, Texas, Agricultural Conservation Program (hereinafter referred to as the 1939 program) in accordance with the provisions of this bulletin and such modifications thereof or other provisions as may hereafter be made.

The provisions of the 1939 program are necessarily subject to such legislation affecting said program as the Congress of the United States may hereafter enact; the making of the payments herein provided are contingent upon such appropriation as the Congress may hereafter provide for such purpose; and the amount of such payments will necessarily be within the limits finally determined by such appropriation, the final estimate of payments which would be made in Sherman County under the 1939 Agricultural Conservation Program, and the extent of participation in the Sherman County Program. *As an adjustment for participation in the Sherman County Program the rates of payment and deductions specified herein may be increased or decreased by as much as 10 percent.*

The provisions of the Sherman County Program (except Sec. 5 (b)) are not applicable in the Southern Region to (1) counties other than Sherman County or (2) land in which the beneficial ownership is in the United States.

SECTION 1. *Farm acreage allotments and goals.*—The county committee, with the assistance of other local committees in the county, shall determine acreage allotments, restoration land goals, and soil-building goals, in accordance with the provisions contained herein and instructions issued by the Agricultural Adjustment Administration (hereinafter referred to as the AAA). The soil-depleting acreage allotments determined for all farms in the county shall not exceed the county acreage allotments established for the county by the AAA, and the sum of the acreage allotments for farms furnishing required forms and information shall not exceed their proportionate share of the county acreage allotments.

(a) *Soil-depleting acreage allotments.*—(1) *Total soil-depleting acreage allotment.*—The total soil-depleting acreage allotment for any farm shall be determined on the basis of good soil management, tillable acreage on the farm, type of soil, topography, degree of erosion, and the acreage of all soil-depleting crops customarily grown on the farm, taking into consideration special crop acreage allotments determined for the farm. The total soil-depleting acreage allotment for any farm shall be comparable with the allotments determined for other farms in the same community which are similar with respect to such factors.

(2) *Wheat allotment.*—Acreage allotments of wheat shall be determined for farms on which wheat has been planted for harvest in one or more of the years 1936, 1937, and 1938, on the basis of tillable acreage and crop rotation practices as reflected in the usual acreage of wheat on the farm or the ratio of wheat acreage to cropland in the community or in the county, and on the basis of the type of soil and topography. Not more than 3 percent of the county wheat acreage allotment shall be apportioned to farms in the county on which wheat was not planted for harvest in any one of the three years 1936, 1937, and 1938, on the basis of the tillable acreage, crop rotation practices, type of soil, and topography. The wheat acreage allotment for any farm shall be comparable with the allotment determined for other farms in the same community which are similar with respect to such factors. In Sherman County wheat acreage allotments may be established for all farms: *Provided,* That in no event shall a wheat acreage allotment be established for a farm which is owned or leased by a conservation district, an association determined by the State committee to have been organized for conservation purposes, or a State agency authorized by law to own or lease land for conservation or wind erosion control purposes.

(b) *Restoration land and soil-building goals*—(1) *Restoration land goal.*—The restoration land goal for any farm shall be determined on the basis of the land in the farm which was designated as restoration land under the 1938 Agricultural Conservation Program, and any additional land in the farm which has been cropped at least once since January 1, 1930, but on which, because of its physical condition and texture and because of climatic conditions, a permanent vegetative cover should be restored.

(2) *Soil-building goal.*—The soil-building goal for any farm shall be one soil-building practice unit for each acre of cropland, each acre of restoration land, and each 15 acres of non-crop open pasture land in the farm. The county committee shall determine which of the approved practices listed in Sec. 8 of this bulletin and the extent to which each such practice shall count toward meeting the soil-building goal for the farm.

Sec. 2. *Maximum farm payment.*—The maximum payment that may be made with respect to any farm in Sherman County shall be $1.05, adjusted for productivity, multiplied by the sum of the following: (1) the acreage of cropland, (2) the acreage of restoration land, and (3) one-fifteenth of the acreage of non-crop open pasture land on the farm.

Sec. 3. *Net farm payment or deduction.*—The net payment or net deduction computed for any farm in Sherman County shall be the maximum farm payment less the sum of the following:

(a) *Deductions for excess acreages of soil-depleting crops*—(1) *Wheat.*—50 cents per bushel of the normal yield for the farm for each acre of wheat in excess of the wheat acreage allotment, or if no wheat acreage allotment is established for a farm, for each acre planted to wheat.

(2) *Total soil-depleting acreage allotments.*—$1.05, adjusted for productivity, for each acre of soil-depleting crops in excess of the total soil-depleting acreage allotment, less the acreage for which deduction is made for exceeding the wheat acreage allotment.

(b) *Failure to carry out soil-building practices.*—$1.05, adjusted for productivity, for each unit by which the soil-building goal is not reached.

(c) *Cropping restoration land.*—$3.00 for each acre designated in 1938 or 1939 as restoration land, which is plowed or tilled in 1939 for any purpose other than tillage practices to protect the land from wind erosion or tillage operations necessary for the seeding of an approved non-depleting cover crop of which the entire growth is left on the land.

(d) *Breaking out of native sod.*—$3.00 for each acre of native sod or any other land on which a permanent vegetative cover has been established that is broken out during the period November 1, 1938 to October 31, 1939, inclusive, unless the breaking out of such land is approved by the county committee as a good farming practice and an equal acreage of cropland on the same farm is restored to permanent vegetative cover, such cropland to be in addition to that designated as restoration land.

Sec. 4. *Division of payments and deductions.*—The net payment or net deduction computed with respect to any farm shall be divided between the landlord and tenant in proportion to the extent to which such landlord and tenant contribute to the carrying out of soil-building practices on the farm. The tenant shall be deemed to have contributed 80 percent and the landlord 20 percent to the carrying out of soil-building practices on the farm unless such persons establish to the satisfaction of the county committee that their respective contributions thereto were different from such respective percentages, in which event such payment or deduction shall be divided in the proportion in which the county committee determines that each such person contributed to the carrying out of soil-building practices on the farm. On any farm where there is more than one landlord the contribution of each landlord to the carrying out of the soil-building practices shall be deemed to be in proportion to the contribution made by each such landlord to the total soil-depleting acreage allotment established for the farm, unless such landlord establishes to the satisfaction of the county committee that his respective contribution to carrying out the practices was different from such respective percentage, in which event such payment or deduction shall be divided in the proportion in which the county committee determines that such landlord contributed to the carrying out of soil-building practices on the farm.

Sec. 5. *General provisions relating to payments and deductions.*—(a) *Increase in small payments.*—The total payment computed for any person with respect to any farm shall be increased as follows:

(1) Any payment amounting to 71 cents or less shall be increased to $1.00;

(2) Any payment amounting to more than 71 cents, but less than $1.00, shall be increased by 40 percent;

(3) Any payment amounting to $1.00 or more shall be increased in accordance with the following schedule:

Amount of payment computed:	*Increase in payment*
$1.00 to $1.99	$0.40
$2.00 to $2.99	.80
$3.00 to $3.99	1.20
$4.00 to $4.99	1.60
$5.00 to $5.99	2.00
$6.00 to $6.99	2.40
$7.00 to $7.99	2.80
$8.00 to $8.99	3.20
$9.00 to $9.99	3.60
$10.00 to $10.99	4.00
$11.00 to $11.99	4.40
$12.00 to $12.99	4.80
$13.00 to $13.99	5.20
$14.00 to $14.99	5.60
$15.00 to $15.99	6.00
$16.00 to $16.99	6.40
$17.00 to $17.99	6.80
$18.00 to $18.99	7.20
$19.00 to $19.99	7.60
$20.00 to $20.99	8.00
$21.00 to $21.99	8.20
$22.00 to $22.99	8.40
$23.00 to $23.99	8.60
$24.00 to $24.99	8.80
$25.00 to $25.99	9.00
$26.00 to $26.99	9.20
$27.00 to $27.99	9.40
$28.00 to $28.99	9.60
$29.00 to $29.99	9.80
$30.00 to $30.99	10.00
$31.00 to $31.99	10.20
$32.00 to $32.99	10.40
$33.00 to $33.99	10.60
$34.00 to $34.99	10.80
$35.00 to $35.99	11.00
$36.00 to $36.99	11.20
$37.00 to $37.99	11.40
$38.00 to $38.99	11.60
$39.00 to $39.99	11.80
$40.00 to $40.99	12.00
$41.00 to $41.99	12.10
$42.00 to $42.99	12.20

Amount of payment computed—Continued.	*Increase in payment*
$43.00 to $43.99	$12.30
$44.00 to $44.99	12.40
$45.00 to $45.99	12.50
$46.00 to $46.99	12.60
$47.00 to $47.99	12.70
$48.00 to $48.99	12.80
$49.00 to $49.99	12.90
$50.00 to $50.99	13.00
$51.00 to $51.99	13.10
$52.00 to $52.99	13.20
$53.00 to $53.99	13.30
$54.00 to $54.99	13.40
$55.00 to $55.99	13.50
$56.00 to $56.99	13.60
$57.00 to $57.99	13.70
$58.00 to $58.99	13.80
$59.00 to $59.99	13.90
$60.00 to $185.99	14.00
$186.00 to $199.99	(1)
$200.00 and over	(2)

[1] Increase to $200.00.
[2] No increase.

(b) *Payments limited to $10,000.*—The total of all payments made in connection with programs for 1939 under Section 8 of the Soil Conservation and Domestic Allotment Act to any individual, partnership, or estate with respect to farms and ranching units located within Texas shall not exceed the sum of $10,000. The total of all payments made under the 1939 program pursuant to the provisions of Section 8 of the Soil Conservation and Domestic Allotment Act to any person other than an individual, partnership, or estate with respect to farms, ranching units, and turpentine places in the United States (including any payment received in Alaska, Hawaii, and Puerto Rico) shall not exceed the sum of $10,000.

All or any part of any payment which has been or otherwise would be made to any person under the 1939 program may be withheld, or required to be returned, if he has adopted, or participated in adopting, any scheme or device, including the dissolution, reorganization, or formation of any corporation, partnership, estate, trust, or by any other means, which was designed to evade, or would have the effect of evading, the provisions of this section.

(c) *Deductions incurred on other farms.*—(1) If the deductions computed for any farm in Sherman County exceed the payment computed for such farm, a landlord's or tenant's share of the amount by which the deduction exceeds the payments shall be deducted from the landlord's or tenant's share of the payment which would otherwise be made to him for performance on any other farms in Sherman County.

(2) If the deductions computed for a landlord or tenant for one or more farms in Sherman County exceed the payments computed for such landlord or tenant on other farms in the county, the amount of such excess deductions shall be deducted from the payments computed for the landlord or tenant for performance on any other farms in Texas if the State committee finds that the crops grown and practices adopted on the farm for which such deductions are computed substantially offset the contribution to the program made on such other farms.

(d) *Deduction for association expenses.*—There shall be deducted from the payments for any farm all or such part as the Secretary may prescribe of its pro rata share of the estimated administrative expenses incurred or to be incurred by the Sherman County Agricultural Conservation Association.

(e) *Payment restricted to effectuation of purposes of the program.*—(1) All or any part of any payment which otherwise would be made to any person under the 1939 program may be withheld (i) if he has adopted any practice which the Secretary determines tends to defeat any of the purposes of the 1939 or previous agricultural conservation programs, or (ii) if, by means of any corporation, partnership, estate, trust, or any other device, or in any manner whatsoever, he has offset, or has participated in offsetting, in whole or in part, the performance for which such payment is otherwise authorized.

(2) No payment will be made to any person with respect to any farm which such person owns or operates in Sherman County if the county committee finds that such person has been negligent and careless in his farming operations by failing to carry out approved wind erosion control measures on land under his control to the extent that any part of such land has become a wind erosion hazard in 1939 to the community in which such farm is located.

(f) *Excess cotton acreage.*—Any person who knowingly plants cotton on his farm in 1939 on acreage in excess of the cotton acreage allotment established for the farm for 1939 shall not be eligible for any payment under the provisions of the 1939 program. Any person having an interest in the cotton crop on a farm on which cotton is planted in 1939 on acreage in excess of the cotton acreage allotment for the farm for 1939 shall be presumed to have knowingly planted cotton on his farm on acreage in excess of such farm cotton acreage allotment if notice of the farm allotment is mailed to him prior to the completion of the planting of cotton on the farm, unless the farmer establishes the fact that the excess acreage was planted to cotton due to his lack of knowledge of the number of acres in the tract(s) planted to cotton. Such notice, if mailed to the operator of the farm, shall be deemed to be notice to all persons sharing in the production of cotton on the farm in 1939.

(g) *Use of soil-conserving crops for market.*—Payment will not be made with respect to any farm unless on such farm in 1939 an acreage of cropland or restoration land, not devoted to soil-depleting crops, is withheld from the production of soil-conserving crops for market, equal to the acreage by which the normal acreage of soil-depleting crops on such farm exceeds the larger of (1) the total soil-depleting acreage allotment for the farm or (2) the acreage devoted to soil-depleting crops on the farm in 1939: *Provided*, That payment shall not be denied any farmer for using such soil-conserving crops for market (1) if in Sherman County the number of cows kept for the production of milk or the products thereof for market does not exceed the normal number of such cows; (2) if on such farm the number of cows kept for the production of milk or the products thereof for market does not exceed the normal number of such cows; or (3) if the AAA determines either (i) that the farmer has substantially complied with the provisions of this paragraph, or (ii) that the county, as a whole, is in substantial compliance with such provisions.

Any farmer shall be deemed to have substantially complied with the provisions of this paragraph either (1) if the increase above normal in the number of dairy cows on his farm does not exceed two cows; or (2) if none of the soil-conserving crops to which such provisions are applicable are used for market other than through the disposition of dairy livestock for slaughter or through the disposition of less than 10 percent of the milk, or products thereof, produced on the farm. Sherman County, as a whole, shall be deemed to be in substantial compliance with such provisions unless: (1) the number of cows kept for the production of milk in the county exceeds by more than 5 percent the normal number of such cows; (2) the acres retired from soil-depleting crops in the county exceed 5 percent of the normal acreage of such crops and exceed 1,000 acres; and (3) the average number of cows kept for the production of milk exceeds two cows per farm and exceeds two cows per 160 acres of farm land.

The normal acreage of soil-depleting crops and the number of cows kept for the production of milk or the products thereof for market shall be determined for any farm in accordance with instructions issued by the AAA, and the AAA shall determine from the latest available statistics of the Department, and shall announce, the counties not deemed to be in substantial compliance.

As used in this paragraph (g), the term "for market" means for disposition by sale, barter, or exchange, or by feeding (in any form) to dairy livestock which, or the products of which, are to be sold, bartered, or exchanged, and such term shall not include consumption on the farm. An agricultural commodity shall be deemed to be consumed on the farm if consumed by the farmer's family, employees, or household, or if fed to poultry or livestock other than dairy livestock on his farm, of if fed to dairy livestock on his farm and such dairy livestock, or the products thereof, are to be consumed by his family, employees, or household. As used in this paragraph (g), the term "soil-conserving crops" means grasses and legumes grown on cropland except those listed in Sec. 7 as soil-depleting.

(h) *Payment computed and made without regard to claims.*—Any payment or share of payment shall be computed and made without regard to questions of title under State law, without deduction of claims for advances (except as provided in subsection (j) of this Sec. 5), and without regard to any claim or lien against any crop, or proceeds thereof, in favor of the owner or any other creditor.

(i) *Changes in leasing and cropping agreements, reduction in number of tenants, and other devices.*—If on any farm in 1939 any change of the arrangements which existed on the farm in 1938 is made between the landlord and the tenants that would cause a greater proportion of the payments to be made to the landlord under the 1939 program than would have been made to him under the 1938 program, payments to the landlord under the 1939 program shall not be greater than the amount that would have been paid to him if the arrangements had not been changed, if the county committee certifies that the change is not justified and disapproves the change.

If on any farm the number of share tenants in 1939 is less than the average number on the farm during the years 1936 to 1938, inclusive, and such reduction would increase the payments that would otherwise be made to the landlord, such payments to the landlord shall not be greater than the amount that would otherwise be made if the county committee certifies that the reduction is not justified and disapproves the reduction.

If the State committee finds that any person who files an application for payment under the 1939 program has employed any other scheme or device, the effect of which would be or has been to deprive any other person of any payment under any agricultural conservation program to which such other person would normally be entitled, the Secretary may withhold in whole or in part from the person participating in or employing such a scheme or device, or require such person to refund in whole or in part, the amount of any payment which has been or would otherwise be made to such person under the 1939 program.

(j) *Assignments.*—Any person who may be entitled to any payment in connection with the 1939 program may assign his interest in such payment as security for cash loaned or advances made for the purpose of financing the making of a crop in 1939. No such assignment will be recognized unless the assignment is made in writing on Form ACP–69 in accordance with instructions (ACP–70) issued by the AAA.

Nothing contained in this section shall be construed to give an assignee a right to any payment other than that to which the farmer is entitled. Neither the Secretary nor any disbursing agent shall be subject to any suit or liability if payment is made to the farmer without regard to the existence of an assignment.

SEC. 6. *Application for payment*—(a) *Persons eligible to file applications.*—An application for payment for a farm may be made by any person who, under the provisions of Sec. 4, shares in the payment which may be computed for any farm and (1) who at the time of harvest is entitled to share in the crops grown on the farm under a lease or operating agreement, or (2) who is owner or operator of such farm and participates thereon in 1939 in carrying out approved soil-building practices or in carrying out conservation measures designed to promote restoration of a permanent vegetative cover on restoration land.

(b) *Time and manner of filing application and information required.*—Payment will be made only upon application submitted through the county office. The Secretary reserves the right (1) to withhold payment from any person who fails to file any form or furnish any information required on any farm which such person is operating or renting to another person for a share of the crops grown thereon, and (2) to refuse to accept any application for payment if such application or any other form or information required is not submitted to the county office within the time fixed by the Director of the Southern Division. At least two weeks' notice to the public shall be given of the expiration of a time limit for filing prescribed forms. Such notice shall be given by mailing the same to the office of the county committee and making copies of the same available to the press.

(c) *Application for other farms.*—If a person has the right to receive all or a portion of the crops, or proceeds therefrom, produced on more than one farm in a county and makes application for payment on one of such farms, such person must make application for payment on all such farms which he operates or rents to other persons. Upon request of the State committee any person shall file with the committee such information as it may request regarding any other farm in the State from which he has the right to receive all or a portion of the crops or proceeds thereof.

SEC. 7. *Soil-depleting acreage.*—Soil-depleting acreage means any acreage used as follows:

(1) Corn planted for any purpose except sweet corn or popcorn grown in home gardens for use on the farm.

(2) Grain sorghums planted for any purpose.

(3) Broomcorn harvested for any purpose.

(4) Annual truck and vegetable crops, including melons and sweetpotatoes, planted for any purpose except when grown in home gardens for use on the farm.

(5) Perennial truck and vegetable crops, including strawberries, harvested for any purpose except when grown in home gardens for use on the farm.

(6) Potatoes planted for any purpose except when grown in home gardens for use on the farm.

(7) Wheat planted (or considered as planted in accordance with the definition set out in Sec. 11) for any purpose on farms for which acreage allotments are established.

(8) Wheat (on farms for which wheat acreage allotments are not established) or oats, barley, and rye, or mixtures containing such crops, on any farm (a) when harvested for grain and (b) when harvested for hay, *except* (i) when such crops are used as nurse crops for legumes or perennial grasses of which a good stand is established in 1939 and the nurse crop is cut green for hay or (ii) when such crops are grown in a mixture containing at least 25 percent by weight of winter legumes.

(9) Sweet sorghums, Sudan grass, or millet harvested for grain, seed, or syrup.

(10) Summer-fallowed acreage not protected from wind and water erosion by methods approved by the State committee.

SEC. 8. *Soil-building practices.*—The soil-building practices listed in the following schedule shall count toward the achievement of the soil-building goal to the extent indicated therein when carried out in 1939 in accordance with specifications, if any, issued by the Director of the Southern Division, and when performed in a workmanlike manner and in accordance with good farming practice for the locality.

Practices carried out with labor, seed, and materials furnished entirely by any State or Federal agency other than the AAA shall not be counted toward the achievement of the soil-building goal. If a portion of the labor, seed, trees, or other materials used in carrying out any practice is furnished by a State or Federal agency other than the AAA and such portion represents one-half or more of the total cost of carrying out such practice, such practice shall not be counted toward the achievement of the soil-building goal; if such portion represents less than one-half of the total cost of carrying out such practice, one-half of such practice shall be counted toward the achievement of the soil-building goal.

Wind erosion control practices and restoration land measures carried out with the use of equipment furnished by the Soil Conservation Service on farms, owned or leased by a conservation district, an association determined by the State committee to have been organized for conservation purposes, or a State agency authorized by law to own or lease land for conservation or wind erosion control purposes, shall not (by virtue of the use of such equipment) be deemed to be paid for in whole or in part by a State or Federal agency.

Schedule of Soil-Building Practices

(a) Each acre of the following, when approved for the farm by the county

committee, shall be counted as one unit, except that credit shall not be given for carrying out more than one of such practices on the same acreage:

(1) Leaving on the land, as a protection against wind erosion, the stalks (at least 10 inches in height) of sorghums or Sudan grass, if the operator's farming plan provides that such cover will be left on the land until the spring of 1940.

(2) Contour listing or pit cultivation, or contour cultivation with a shallow-furrowing or shovel-type implement approved by the county committee, on summer-fallowed land provided such practice is carried out in an approved manner before June 15, 1939.

(3) Stripcropping with alternate strips of close-grown crops and intertilled crops or fallow.

(4) Contour farming of intertilled crops.

(5) Natural vegetative cover or small grain stubble of crops harvested in 1939 left on cropland, not tilled after July 1, 1939, where it is determined by the county committee that such cover is necessary as a protection against wind erosion and the operator's farming plan provides that such cover will be left on the land until the spring of 1940.

(b) Each acre of the following shall be counted as two units:

(1) Terracing.

(2) Border planting of Sudan grass, sweet sorghums, and millet, the stalks (at least 10 inches in height) of which are left on the land until the spring of 1940.

SEC. 9. *Productivity indexes.*—A productivity index shall be established for each farm by the county committee, with the assistance of other local committees and with the approval of the State committee. Such productivity index shall be based upon the normal yield of wheat per acre for the farm as compared with the normal yield of wheat per acre in Sherman County. Where the yield of wheat does not accurately reflect the productivity of a farm, the yield of grain sorghums or any other crop that reflects the productivity of the farm may be used, provided that the productivity index for such farm shall be adjusted, if necessary, so as to be fair and equitable as compared with the productivity indexes for other farms in the county having similar soils or productive capacity.

The average productivity index for all farms in the county shall not exceed 100, unless it is determined that farms for which such indexes are established are not representative of all farms in the county and a variation from 100 is approved by the AAA.

SEC. 10. *Appeals.*—Any person who considers himself aggrieved by any recommendation or determination of the county committee with respect to any farm in which he has an interest may, within 15 days after notice thereof is forwarded to or made available to him, request the county committee in writing to reconsider its recommendation or determination with respect to any of the following matters: (a) eligibility to file an application for payment; (b) any acreage allotment goal; (c) the division of payment; or (d) any other matter affecting the right to or the amount of his payment with respect to the farm.

The county committee shall notify such person in writing of its decision within 15 days after receipt of such written request for reconsideration. If such person is dissatisfied with the decision of the county committee, he may appeal in writing to the State committee within 15 days after such decision is forwarded to or made available to him. The State committee shall inform such person of its decision in writing within 30 days after the receipt of the appeal. If such person is dissatisfied with the decision of the State committee, he may request the Director of the Southern Division to review the decision of the State committee within 15 days after such decision is forwarded to or made available to him.

SEC. 11. *Definitions.*—For the purpose of the 1939 program—

Secretary means the Secretary of Agriculture of the United States.

Director of the southern division means the Director of the Southern Division of the Agricultural Adjustment Administration in charge of the 1939 Agricultural Conservation Program in the Southern Region.

Southern region means the area included in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, South Carolina, and Texas.

State committee means the group of persons designated to assist in the administration of the 1939 Agricultural Conservation Program in Texas.

County committee means the group of persons elected within Sherman County to assist in the administration of the 1939 program.

Person means an individual, partnership, association, corporation, estate, or trust, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

Landlord means a person who owns land and rents such land to another person or operates such land.

Tenant means a person who rents land from another person (for cash, a fixed commodity payment, or a share of the proceeds of the crops) and is entitled under a written or oral lease or agreement to receive all or a share of the proceeds of the crops produced thereon.

Farm means all adjacent or nearby farm land under the same ownership which is operated by one person, including also:

(1) Any other adjacent or nearby farm land operated by the same person (as part of the same unit with respect to the rotation of crops and with workstock, farm machinery, and labor substantially separate from that for any other land), the inclusion of which is requested or agreed to, within the time and in the manner specified by the AAA, by the operator and all the owners who are entitled to share in the proceeds of the crops on any of the land to be included in the farm, and

(2) Any field-rented tract (whether operated by the same or another person) which, together with any other land included in the farm, constitutes a unit with respect to the rotation of crops;

Provided, That land not under the same ownership shall be included in the same farm only if the county committee determines that:

(a) There is one crop rotation system on the entire area of land;

(b) The yields and productivity of the land under different ownerships do not vary substantially;

(c) The combination is not being made for the purpose of increasing allotments or primarily for the purpose of effecting compliance; and

(d) The several ownership tracts constitute a farming unit for the operator and will be regarded in the community as a farm in 1939.

A farm shall be regarded as located in Sherman County if the principal dwelling is situated therein, or if there is no dwelling on the farm, it shall be regarded as located in the county in which the major portion of the farm is located.

Cropland means farm land which in 1938 was tilled or was in a regular rotation, excluding restoration land and any land which constitutes, or will constitute if such tillage is continued, a wind erosion hazard to the community.

Restoration land means farm land which is subject to serious wind erosion and is unsuited to continued production of cultivated crops and which was cropped at least once since January 1, 1930, and which is designated by the county committee as land on which, because of its physical condition and texture and because of climatic conditions, a permanent vegetative cover should be restored.

Non-crop open pasture means pasture land (other than rotation pasture land and range land) on which the predominant growth is forage suitable for grazing and on which the number or grouping of any trees or shrubs is such that the land could not fairly be considered as woodland.

General soil-depleting crops means all soil-depleting crops grown in Sherman County other than wheat planted.

Acreage planted to wheat means (1) any acreage seeded to wheat which is on the farm on or after December 15, 1938 (except when it is seeded in a mixture containing less than 50 percent by weight of wheat, or containing 25 percent or more by weight of rye, barley, vetch, or Austrian winter peas, and the seeding mixture may reasonably be expected to produce a crop that could not be

harvested as wheat for grain or seed); (2) any acreage of volunteer wheat which is on the farm after April 15, 1939, and (3) any acreage which is seeded to a mixture containing wheat but the crops other than wheat fail to reach maturity and the wheat is harvested for grain or hay.

Done at Washington, D. C., this 10th day of February 1939. Witness my hand and the seal of the Department of Agriculture.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 39-516; Filed, February 11, 1939; 12:27 p. m.]

FEDERAL TRADE COMMISSION.

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 8th day of February, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

[Docket No. 3612]

IN THE MATTER OF UNIVERSAL CORDAGE COMPANY, INC.

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress, (38 Stat. 717; 15 U. S. C. A., Section 41),

It is ordered, That Robert S. Hall, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Monday, February 27, 1939, at nine o'clock in the forenoon of that day (eastern standard time) in Room 2301 United States Court House, Foley Square, New York, New York.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39-501; Filed, February 11, 1939; 9:39 a. m.]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 8th day of February, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

[Docket No. 3666]

IN THE MATTER OF PERFUMS LENGYEL, LTD.

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress, (38 Stat. 717; 15 U. S. C. A., Section 41),

It is ordered, That Edward E. Reardon, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Tuesday, February 21, 1939, at ten o'clock in the forenoon of that day (eastern standard time) in Room 2301, United States Court House, Foley Square, New York, New York.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39-505; Filed, February 11, 1939; 9:40 a. m.]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 9th day of February, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

[Docket No. 3387]

IN THE MATTER OF CIVILIAN PREPARATORY SERVICE, INC., A CORPORATION

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress, (38 Stat. 717; 15 U. S. C. A., Section 41).

It is ordered, That Robert S. Hall, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Monday, February 20, 1939, at ten o'clock in the forenoon of that day (eastern standard time) in Room 502-C, Federal Building, Philadelphia, Pennsylvania.

Upon completion of testimony for the Federal Trade Commisison, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39-499; Filed, February 11, 1939; 9:39 a. m.]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 9th day of February, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

[Docket No. 3611]

IN THE MATTER OF JOSTEN MANUFACTURING COMPANY

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress, (38 Stat. 717; 15 U. S. C. A., Section 41),

It is ordered, That Robert S. Hall, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Friday, March 17, 1939, at nine o'clock in the forenoon of that day (central standard time) in Court House, Owatonna, Minnesota.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39-500; Filed, February 11, 1939; 9:39 a. m.]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 9th day of February, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

[Docket No. 3624]

IN THE MATTER OF I. SEKINE COMPANY, INC.

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress, (38 Stat. 717; 15 U. S. C. A., Section 41).

It is ordered, That Robert S. Hall, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Wednesday, March 1, 1939, at nine o'clock in the forenoon of that day (eastern standard time) in Room 2301, United States Court House, Foley Square, New York, New York.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39-502; Filed, February 11, 1939; 9:39 a. m.]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 9th day of February, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

[Docket No. 3625]

IN THE MATTER OF IMOGENE SHEPHERD, LTD.

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress, (38 Stat. 717; 15 U. S. C. A., Section 41),

It is ordered, That Robert S. Hall, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Tuesday, March 7, 1939, at nine o'clock in the forenoon of that day (central standard time) in Room 1123, New Post Office Building, 433 West Van Buren Street, Chicago, Illinois.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39-503; Filed, February 11, 1939; 9:40 a. m.]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 9th day of February, A. D. 1939.

Commissioner: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

[Docket No. 3656]

IN THE MATTER OF R. T. VANDERBILT COMPANY, INC., AND STANDARD MINERAL COMPANY, INC.

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress, (38 Stat. 717; 15 U. S. C. A., Section 41),

It is ordered, That Robert S. Hall, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Thursday, March 2, 1939, at nine o'clock in the forenoon of that day (eastern standard time) in Room 2301, United States Court House, Foley Square, New York, New York.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39-504; Filed, February 11, 1939; 9:40 a. m.]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 9th day of February, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

[Docket No. 3688]

IN THE MATTER OF SIGNODE STEEL STRAPPING COMPANY

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress, (38 Stat. 717; 15 U. S. C. A., Section 41),

It is ordered, That Robert S. Hall, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Tuesday, March 14, 1939, at nine o'clock in the forenoon of that day (central standard time) in Room 1123, New Post Office Building, 433 West Van Buren Street, Chicago, Illinois.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39-506; Filed, February 11, 1939; 9:40 a. m.]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 10th day of February, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

[Docket No. 3498]

IN THE MATTER OF GERRARD COMPANY, INC., AND AMERICAN STEEL & WIRE COMPANY

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress, (38 Stat. 717; 15 U. S. C. A., Section 41),

It is ordered, That Robert S. Hall, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Friday, March 10, 1939, at nine o'clock in the forenoon of that day (central standard time) in Room 1123, New Post Office Building, 433 West Van Buren Street, Chicago, Illinois.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39–507; Filed, February 11, 1939; 9:41 a. m.]

INTERSTATE COMMERCE COMMISSION.

[Order No. 28190]

NEW AUTOMOBILES IN INTERSTATE COMMERCE

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 27th day of January, A. D. 1939.

The Commission having under consideration (1) a petition filed by The National Automobile Transporters Association, Inc., on behalf of its members engaging in the transportation of new automobiles, and (2) the subject of the rates, charges, rules, regulations and practices applicable to the transportation by common carriers by railroad, by motor vehicle, or by water, and by contract carriers by motor vehicle, of new automobiles, set up, and good cause appearing therefor:

It is ordered, That an investigation be, and it is hereby, instituted by the Commission, on its own motion, into the lawfulness of the rates, charges, rules, regulations and practices of

common carriers by railroad
common carriers by motor vehicle, including the so-called "haul-away," "drive - away" and "tow - bar" methods
contract carriers by motor vehicle, including the so-called "haul-away," "drive - away" and "tow - bar" methods, and
common carriers by water

for the transportation in interstate or foreign commerce (in so far as such transportation is subject to the provisions of Parts I and II of the Interstate Commerce Act) of new automobiles, set up (not including shipments by rail or water moving on less-than-carload rates), from and to all points in the continental United States, other than the territory of Alaska, with a view to determining and prescribing just and reasonable rates, charges, rules, regulations and practices thereafter to be observed, including minimum rates and charges and the relation, if any there should be, of rates and charges as between the said respective forms of transportation, and making such further order, or orders, or taking such other action in the premises as may be warranted by the record.

It is further ordered, That all common carriers of property by railroad, all common carriers of property by water subject to Part I or Part II of the Interstate Commerce Act, and all common and contract carriers of new automobiles, set up, by motor vehicle subject to Part II of the Interstate Commerce Act, including those using the "haul-away", "drive-away" and "tow-bar" methods, be, and they are hereby, made respondents to this proceeding.

It is further ordered, That a copy of this order be served upon each of said respondents and that notice of this proceeding be given to the public by posting a copy of this order in the office of the Secretary of the Commission at Washington, D. C.

And it is further ordered, That this proceeding be assigned for hearing at such time and places as the Commission may hereafter direct.

By the Commission.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 39–521; Filed, February 13, 1939; 11:03 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 10th day of February A. D. 1939.

[File No. 31–207]

IN THE MATTER OF INTERNATIONAL HYDRO-ELECTRIC SYSTEM

ORDER CONSENTING TO WITHDRAWAL OF APPLICATIONS PURSUANT TO REQUEST OF APPLICANT

Applications having been filed by International Hydro-Electric System on behalf of itself and its subsidiaries as follows;

(1) An application pursuant to Section 2 (a) (8) of the Public Utility Holding Company Act of 1935 requesting an order declaring that New England Power Association is not a subsidiary of International Hydro-Electric System;

(2) An application by International Hydro-Electric System requesting an order of exemption under Section 3 (a) (5) of said Act;

(3) An application pursuant to Section 2 (a) (8) of said Act requesting an order declaring that Moreau Manufacturing Corporation is not a subsidiary of International Hydro-Electric System;

The applicant having requested the unconditional withdrawal of the above-described applications numbered (1) and (2), and the withdrawal of the above-described application numbered (3) to be effective upon the filing by Moreau Manufacturing Corporation of its application for relief without prejudice to renew such application if so requested by Moreau Manufacturing Corporation; and

Moreau Manufacturing Corporation having filed its own application for relief and the Commission having consented to the withdrawal of the above-described applications;

It is ordered, That the above-described applications be withdrawn, without prejudice to the right of International Hydro-Electric System to renew its application in respect to Moreau Manufacturing Corporation upon the request of said Corporation.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39–511; Filed, February 11, 1939; 12:24 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 10th day of February, A. D. 1939.

IN THE MATTER OF OIL ROYALTIES INVESTMENT TRUST, LTD., 408 SOUTH SPRING STREET, LOS ANGELES, CALIFORNIA

ORDER DENYING REGISTRATION

The application of Oil Royalties Investment Trust, Ltd., for registration as a broker or dealer having after appropriate notice come on for hearing on the question of denial or postponement; and

The Commission having duly considered the matter, being fully advised in the premises and having this day made and filed its findings of fact herein;

It is ordered, Pursuant to Section 15 (b) of the Securities Exchange Act of 1934, as amended, that the application of Oil Royalties Investment Trust, Ltd., for registration as a broker or dealer be and the same is hereby denied.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39–512; Filed, February 11, 1939; 12:24 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 10th day of February, A. D. 1939.

[File No. 60-6]

IN THE MATTER OF ASSOCIATED GENERAL UTILITIES COMPANY

ORDER RELATIVE TO STATUS AS SUBSIDIARY COMPANY

The Commission having ordered [1] that a hearing be held to determine, pursuant to section 2 (a) (8) (B) of the Public Utility Holding Company Act of 1935, whether an order of the Commission should issue declaring Associated General Utilities Company to be a subsidiary company of Associated Gas and Electric Company, a New York corporation, and Associated Gas and Electric Corporation, a Delaware corporation, and each of them, as provided in said section of said Act;

The hearing pursuant to the Commission's order having been held after appropriate notice; Associated General Utilities Company having waived a trial examiner's report, submission of proposed findings of fact by the Commission or requested findings of fact by counsel for the Commission, the filing of briefs with the Commission, and oral argument before the Commission prior to the entry of the Commission's findings and order herein; and the Commission having considered the record in this matter, including a stipulation that this order may issue, and having made and filed its findings herein;

It is ordered, That Associated General Utilities Company is hereby declared to be a subsidiary company, as defined in the Public Utility Holding Company Act of 1935, of Associated Gas and Electric Company, a New York corporation, and Associated Gas and Electric Corporation, a Delaware corporation, and each of them, and as such subject to the obligations, duties, and liabilities imposed upon subsidiary companies of holding companies by said Act. A copy of this order shall be mailed, as provided in section 2 (b) of the Act, not later than February 10, 1939, and shall be effective on and after March 13, 1939.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39-513; Filed, February 11, 1939; 12:24 p. m.]

[1] 4 F. R. 73 DI.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 10th day of February 1939.

[File No. 1-1159]

IN THE MATTER OF ROSS GEAR AND TOOL COMPANY COMMON STOCK, NO PAR VALUE

ORDER SETTING HEARING ON APPLICATION TO WITHDRAW FROM LISTING AND REGISTRATION

The Ross Gear and Tool Company, pursuant to Section 12 (d) of the Securities Exchange Act of 1934, as amended, and Rule X-12D2-1 (b) promulgated thereunder, having made application to the Commission to withdraw its Common Stock, No Par Value, from listing and registration on The Chicago Stock Exchange; and

The Commission deeming it necessary for the protection of investors that a hearing be held in this matter at which all interested persons be given an opportunity to be heard;

It is ordered, That the matter be set down for hearing at 10 A. M. on Thursday, March 23, 1939, at the office of the Securities and Exchange Commission, 105 West Adams Street, Chicago, Illinois, and continue thereafter at such times and places as the Commission or its officer herein designated shall determine, and that general notice thereof be given; and

It is further ordered, That Herman Chill, an officer of the Commission, be and he hereby is designated to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39-514; Filed, February 11, 1939; 12:24 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 11th day of February, A. D. 1939.

[File No. 32-116]

IN THE MATTER OF THE CONNECTICUT LIGHT & POWER COMPANY

NOTICE OF AND ORDER FOR HEARING

An application pursuant to Sections 6 (b), 12 (c) and 20 (a) of the Public Utility Holding Company Act of 1935, having heretofore been filed with this Commission by The Connecticut Light & Power Company; and

An order approving such applications of The Connecticut Light & Power Company having been issued by the Commission on November 26, 1938;[1] and

The Commission in such order having stated that,

"*It is further ordered*, That the Commission reserve jurisdiction to determine, at a later date, whether the fee to be paid to Putnam & Company and to Charles W. Scranton & Company, in connection with the issue and sale of the First and Refunding Mortgage Three and One-quarter Percent Bonds, Series H, is or is not reasonable."

It is now ordered, That a hearing on such matter be held on March 3, 1939 at ten o'clock in the forenoon of that day, at the offices of the Securities and Exchange Commission, 120 Broadway, New York, New York.

It is further ordered, That Richard Townsend or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under Section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before February 27, 1939.

The matter concerned herewith is in regard to the determination of whether the fee charged by Putnam & Company and by Charles W. Scranton & Company in connection with the issue and sale of the First and Refunding Mortgage Three and One-quarter Percent Bonds, Series

[1] 3 F. R. 2888 DI.

H, of The Connecticut Light & Power Company is or is not reasonable.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39–515; Filed, February 11, 1939; 12:25 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C. on the 11th day of February 1939.

IN THE MATTER OF GEORGE WALLACE GREEN, DOING BUSINESS AS CASCADE SECURITIES COMPANY, 414 SYMONS BUILDING, SPOKANE, WASHINGTON

ORDER FOR PROCEEDINGS AND NOTICE OF HEARING OF THE QUESTION OF REVOCATION AND/OR SUSPENSION OF REGISTRATION

The Commission having reasonable grounds to believe that George Wallace Green, doing business as Cascade Securities Company, registered as a broker and dealer under Section 15 (b) of the Securities Exchange Act of 1934, as amended, hereinafter sometimes referred to as the registrant, has willfully violated the provisions of Rule X–15B–2 adopted by the Commission pursuant to Sections 15 (b), 17 (a) and 23 (a) of said Act by failing to report removal of registrant's offices from the address given under Item 2 of the application for registration as 414 Symons Building, Spokane, Washington, and by failing to report removal of the residence of registrant from the address given under Item 7 of the application for registration as Close Inn Apartments, Spokane, Washington; and that it is in the public interest to revoke or suspend said registration; and

The Commission being of the opinion that it is necessary and appropriate in the public interest and for the protection of investors that proceedings be instituted for the purposes below provided;

It is ordered, That proceedings be held to determine whether the registration of George Wallace Green, doing business as Cascade Securities Company, should be revoked or suspended pursuant to the provisions of Section 15 (b) of the Securities Exchange Act of 1934, as amended.

It is further ordered, That a hearing for the purpose of taking evidence be held at 10:00 A. M. on March 3, 1939, at the Seattle Regional Office, Securities and Exchange Commission, Exchange Building, Seattle, Washington, and that the said hearing be continued at such other time or place as the Commission or the officer conducting such hearing may determine; that for the purpose of said hearing John G. Clarkson be and he is hereby designated as the officer of the Commission to administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, require the production of books, papers, correspondence, memoranda, and any and all other records deemed relevant or material to the matters in issue at said hearing and to perform all other duties in connection therewith as authorized by law.

It is further ordered, That this notice be served on the said registrant personally or by registered mail, not less than seven (7) days prior to the time of the hearing, or in the event of failure to serve registrant personally or by registered mail that this order and notice be published in the FEDERAL REGISTER in the manner prescribed by the Federal Register Act.

Upon the completion of the taking of testimony in this matter, the officer conducting said hearing is directed to conclude said hearing, make his report to the Commission, and transmit same with a record of this hearing to the Commission.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39–524; Filed, February 13, 1939; 11:32 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C. on the 11th day of February 1939.

IN THE MATTER OF EDWARD L. WEBSTER, DOING BUSINESS AS WEST STATES INVESTMENT CO. BOX 54 PAYETTE, IDAHO

ORDER FOR PROCEEDINGS AND NOTICE OF HEARING ON THE QUESTION OF REVOCATION AND/OR SUSPENSION OF REGISTRATION

The Commission having reasonable grounds to believe that Edward L. Webster, doing business as West States Investment Co., registered under Section 15 (b) of the Securities Exchange Act of 1934, as amended, as a broker and dealer, hereinafter sometimes referred to as the registrant, has willfully violated the provisions of Rule X–15B–2, adopted by the Commission pursuant to Sections 15 (b), 17 (a) and 23 (a) of said Act, by failing to report removal of registrant's offices from the address given under Item 2 of the application for registration as Box 54, Payette, Idaho, and by failing to report removal of the residence of registrant from the address given under Item 7 of the application for registration as 1205—7th Avenue North, Payette, Idaho; and that it is in the public interest to revoke or suspend said registration; and

The Commission being of the opinion that it is necessary and appropriate in the public interest and for the protection of investors that proceedings be instituted for the purposes below provided;

It is ordered, That proceedings be held to determine whether the registration of Edward L. Webster, doing business as West States Investment Co., should be revoked or suspended pursuant to the provisions of Section 15 (b) of the Securities Exchange Act of 1934, as amended.

It is further ordered, That a hearing for the purpose of taking evidence be held at 10:00 A. M. on March 4, 1939, at the Seattle Regional Office, Securities and Exchange Commission, Exchange Building, Seattle, Washington, and that the said hearing be continued at such other time or place as the Commission or the officer conducting such hearing may determine; that for the purpose of said hearing John G. Clarkson be and he is hereby designated as the officer of the Commission to administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, require the production of books, papers, correspondence, memoranda, and any and all other records deemed relevant or material to the matters in issue at said hearing and to perform all other duties in connection therewith as authorized by law.

It is further ordered, That this notice be served on the said registrant personally or by registered mail not less than seven (7) days prior to the time of the hearing, or in the event of failure to serve registrant personally or by registered mail that this order and notice be published in the FEDERAL REGISTER in the manner prescribed by the Federal Register Act.

Upon the completion of the taking of testimony in this matter, the officer conducting said hearing is directed to conclude said hearing, make his report to the Commission, and transmit same with a record of this hearing to the Commission.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39–525; Filed, February 13, 1939; 11:32 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C. on the 11th day of February, 1939.

IN THE MATTER OF ENOCH VICTOR FARNICK, DOING BUSINESS AS KELLOGG BROKERAGE COMPANY, KELLOGG, IDAHO

ORDER FOR PROCEEDINGS AND NOTICE OF HEARING ON THE QUESTION OF REVOCATION AND/OR SUSPENSION OF REGISTRATION

The Commission having reasonable grounds to believe that Enoch Victor Farnick, doing business as Kellogg Brokerage Company, registered as a broker under Section 15 (b) of the Securities Exchange Act of 1934, as

amended, hereinafter sometimes referred to as the registrant, has willfully violated the provisions of Rule X–15B–2 adopted by the Commission pursuant to Sections 15 (b), 17 (a) and 23 (a) of the said Act by failing to report removal of registrant's offices from the address given under Item 2 of the application for registration as Kellogg, Idaho, and by failing to report removal of the residence of registrant from the address given under Item 7 of the application for registration as 417 W. Garden Street, Couer d'Alene, Idaho; and that it is in the public interest to revoke or suspend said registration; and

The Commission being of the opinion that it is necessary and appropriate in the public interest and for the protection of investors that proceedings be instituted for the purposes below provided;

It is ordered, That proceedings be held to determine whether the registration of Enoch Victor Farnick, doing business as Kellogg Brokerage Company, should be revoked or suspended pursuant to the provisions of Section 15 (b) of the Securities Exchange Act of 1934, as amended.

It is further ordered, That a hearing for the purpose of taking evidence be held at 2:00 P. M. on March 3, 1939, at the Seattle Regional Office, Securities and Exchange Commission, Exchange Building, Seattle, Washington, and that the said hearing be continued at such other time or place as the Commission or the officer conducting such hearing may determine; that for the purpose of said hearing John G. Clarkson be and he is hereby designated as the officer of the Commission to administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, require the production of books, papers, correspondence, memoranda, and any and all other records deemed relevant or material to the matters in issue at said hearing and to perform all other duties in connection therewith as authorized by law.

It is further ordered, That this notice be served on the said registrant personally or by registered mail, not less than seven (7) days prior to the time of the hearing, or in the event of failure to serve registrant personally or by registered mail that this order and notice be published in the FEDERAL REGISTER in the manner prescribed by the Federal Register Act.

Upon the completion of the taking of testimony in this matter, the officer conducting said hearing is directed to conclude said hearing, make his report to the Commission, and transmit same with a record of this hearing to the Commission.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39–526; Filed, February 13, 1939; 11:33 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C. on the 11th day of February 1939.

IN THE MATTER OF MERRITT M. BACON; IRVING ZUELKE BUILDING, APPLETON, WISCONSIN

MEMORANDUM OPINION AND ORDER REVOKING REGISTRATION

This is a proceeding pursuant to Section 15 (b) of the Securities Exchange Act of 1934, as amended, to determine whether the registration of Merritt M. Bacon as a dealer, effective January 1, 1936, should be revoked or suspended.

At a hearing held, pursuant to the Commission's order, on November 1, 1938, at Chicago, Illinois, registrant failed to appear personally or by counsel, although notice of the hearing was received personally by him. The Trial Examiner filed an advisory report in which he found that the registrant had been convicted on or about July 8, 1938, in the Municipal Court of Outagamie County, State of Wisconsin, of felonies involving the purchase or sale of securities or arising out of the conduct of the business of a broker or dealer. On an independent review of the record we adopt the Examiner's findings and further find that revocation of the registration of Merritt M. Bacon is in the public interest.

It is therefore ordered, Pursuant to Section 15 (b) of the Securities Exchange Act of 1934, as amended, that the registration of Merritt M. Bacon be and the same is hereby revoked.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39–527; Filed, February 13, 1939; 11:33 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 11th day of February 1939.

IN THE MATTER OF FORT DEARBORN SECURITIES CORPORATION 176 WEST ADAMS STREET, CHICAGO, ILLINOIS

MEMORANDUM OPINION AND ORDER REVOKING REGISTRATION

This is a proceeding pursuant to Section 15 (b) of the Securities Exchange Act of 1934, as amended, to determine whether the registration of Fort Dearborn Securities Corporation as a broker and dealer should be revoked or suspended.

At a hearing held, pursuant to the Commission's order, on October 24, 1938, at Chicago, Illinois, registrant failed to contest these proceedings, although notice of the hearing was received by it. The Trial Examiner filed an advisory report in which he found that the registrant from October 1937 to July 1938 willfully violated Sections 17 (a) (1) and 17 (a) (3) of the Securities Act of 1933, as amended, and willfully violated Section 15 (c) (1) of the Securities Exchange Act of 1934, as amended, and Rule X–15C1–2 thereunder, all as alleged in the order of the Commission dated September 21, 1938. On an independent review of the record we adopt the Examiner's findings, and find further that revocation of the registration of Fort Dearborn Securities Corporation is in the public interest.

It is therefore ordered, Pursuant to Section 15 (b) of the Securities Exchange Act of 1934, as amended, that the registration of Fort Dearborn Securities Corporation be and the same is hereby revoked.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39–528; Filed, February 13, 1939; 11:33 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C. on the 11th day of February 1939.

IN THE MATTER OF H. H. STERN, 956—18TH NORTH, SEATTLE, WASHINGTON

ORDER FOR PROCEEDINGS AND NOTICE OF HEARING ON THE QUESTION OF REVOCATION AND/OR SUSPENSION OF REGISTRATION

The Commission having reasonable grounds to believe that H. H. Stern, registered as a broker and dealer under Section 15 (b) of the Securities Exchange Act of 1934, as amended, hereinafter sometimes referred to as the registrant, has willfully violated the provisions of Rule X–15B–2 adopted by the Commission pursuant to Sections 15 (b), 17 (a) and 23 (a) of said Act by failing to report removal of registrant's offices from the address given under Item 2 of the application for registration as 956—18th North, Seattle, Washington, and by failing to report removal of the residence of registrant from the address given under Item 7 of said application for registration as 956—18th North, Seattle, Washington; and that it is in the public interest to suspend or revoke said registration; and

The Commission being of the opinion that it is necessary and appropriate in the public interest and for the protection of investors that proceedings be instituted for the purposes below provided;

It is ordered, That proceedings be held to determine whether the registration of H. H. Stern should be revoked or suspended pursuant to the provisions of Sec-

tion 15 (b) of the Securities Exchange Act of 1934, as amended.

It is further ordered, That a hearing for the purpose of taking evidence be held at 2:00 P. M. on March 2, 1939, at the Seattle Regional Office, Securities and Exchange Commission, Exchange Building, Seattle, Washington, and that the said hearing be continued at such other time or place as the Commission or the officer conducting such hearing may determine; that for the purpose of said hearing John G. Clarkson be and he is hereby designated as the officer of the Commission to administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, require the production of books, papers, correspondence, memoranda, and any and all other records deemed relevant or material to the matters in issue at said hearing and to perform all other duties in connection therewith as authorized by law.

It is further ordered, That this notice be served on the said registrant personally or by registered mail, not less than seven (7) days prior to the time of the hearing, or in the event of failure to serve registrant personally or by registered mail that this order and notice be published in the FEDERAL REGISTER in the manner prescribed by the Federal Register Act.

Upon the completion of the taking of testimony in this matter, the officer conducting said hearing is directed to conclude said hearing, make his report to the Commission, and transmit same with a record of this hearing to the Commission.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-529; Filed, February 13, 1939; 11:33 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 11th day of February, A. D. 1939.

[File No. 34-12]

IN THE MATTER OF COMMUNITY POWER AND LIGHT COMPANY

NOTICE OF AND ORDER FOR HEARING

An amendment having been filed by Community Power and Light Company to its application previously filed pursuant to Rules U-12C-2, U-12E-4, and U-12E-5, and Sections 7 and 11 (g) of the Public Utility Holding Company Act of 1935;

It is ordered, That a hearing,[1] which was held on February 24, 1938 and continued subject to call of the Trial Examiner, be reconvened on March 13, 1939, at 10 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, NW, Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held.

It is further ordered, That Robert P. Reeder or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under Section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before March 8, 1939.

The matter concerned herewith is in regard to an application filed by Community Power and Light Company under Rules U-12C-2, and U-12E-4, and Section 11 (g) of the Public Utility Holding Company Act of 1935 for a report by this Commission on a plan of recapitalization, which, in brief, provides as follows:

(1) That the First Preferred Stock, $6 Dividend Series, of the applicant be reclassified into five shares of its New Common Stock.

(2) That one share of $2.50 Cumulative Convertible First Preferred Stock of the applicant be issued in full satisfaction of all unpaid accumulated and accrued dividends on each share of the First Preferred Stock, $6 Dividend Series: *Provided, however,* That the holders of such First Preferred Stock, who do not accept shares of the New $2.50 Cumulative Convertible First Preferred Stock, will receive a Dividend Arrears Certificate in the face amount of $43.00 (or such greater face amount as shall represent the dividend arrears per share at the time of the meeting of stockholders at which the plan and said proposed amendment to the corporate charter shall be adopted).

(3) That each share of the Old Common Stock of the applicant will be reclassified and changed into five shares of the New Common Stock.

(4) That the proposed plan of reorganization shall not become operative unless an amendment to the corporate charter making operative such plan of reorganization shall have been approved by at least two-thirds of the First Preferred Stock, $6 Dividend Series; or until at least two-thirds of the First Preferred Stock, $6 Dividend Series shall accept shares of the new $2.50 Cumulative Convertible First Preferred Stock in full satisfaction of dividend arrears.

(5) That the capital of the applicant will be reduced by $7,422,150. This being the difference between the aggregate stated value of the First Preferred Stock, $6 Dividend Series and the Old Common Stock ($9,396,200) and the aggregate stated value of the New Common Stock to be initially outstanding ($1,974,050). The amount of such reduction to be transferred to the capital surplus account. The capital surplus thus created will be transferred to capital in an amount representing the aggregate par value of shares of New Preferred Stock issued in satisfaction of dividend arrears on the Old Preferred Stock and the balance will be applied in greater part (after similar application of the company's present earned and capital surplus) to provide a reserve for the Dividend Arrears Certificates to be outstanding, to the write-off of excess carrying value of investments in subsidiaries, unamortized debt discount and expense and the cost of preferred stock financing, and to provide a reserve for the revaluation of investments.

The $2.50 Cumulative Convertible First Preferred Stock, proposed to be issued under this plan, provides for a semi-annual dividend when and as declared by the board of directors of the applicant at the rate of $2.50 per share per annum cumulated and is to be redeemable in whole or in part at $43 per share (or such greater amount as shall equal the dividend arrears per share on the Old Preferred Stock at the time of the special meeting of the stockholders). Furthermore, each share of proposed New $2.50 Cumulative Convertible First Preferred Stock will be convertible at the holder's option into two shares of the New Common Stock.

The proposed New Common Stock will have a par value of $5 per share. It will be entitled to one vote per share and is to have no preemptive rights.

The proposed Dividend Arrears Certificates are to evidence the rights of the First Preferred Stock, $6 Dividend Series, to receive the amount of the dividend arrearages before any payment is made to the holders of the proposed New Common Stock. Such Dividend Arrears Certificates do not draw interest nor carry voting power.

And a declaration has been filed by the applicant pursuant to Rule U-12E-5 with regard to the solicitation by the applicant of the proxies of the Old Preferred and Old Common stockholders assenting to the proposed amendment to the corporate charter of the applicant making effective the proposed plan of recapitalization.

[1] 3 F. R. 258 DI.

And a declaration has been filed by the applicant pursuant to Section 7 of the Act with regard to the issuance by the applicant of the New $2.50 Cumulative Convertible First Preferred Stock, the New Common Stock and the Dividend Arrears Certificates to be distributed to the Old Preferred and Common stockholders as set forth above.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39–530; Filed, February 13, 1939; 11:34 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 11th day of February 1939.

[File No. 1–1362]

IN THE MATTER OF NATIONAL UNION RADIO CORPORATION COMMON STOCK, $1 PAR VALUE

ORDER SETTING HEARING ON APPLICATION TO WITHDRAW FROM LISTING AND REGISTRATION

The National Union Radio Corporation pursuant to Section 12 (d) of the Securities Exchange Act of 1934, as amended, and Rule X–12D2–1 (b) promulgated thereunder, having made application to the Commission to withdraw its Common Stock, $1 Par Value, from listing and registration on the Chicago Stock Exchange; and

The Commission deeming it necessary for the protection of investors that a hearing be held in this matter at which all interested persons be given an opportunity to be heard;

It is ordered, That the matter be set down for hearing at 10 A. M. on Monday, March 27, 1939, at the office of the Securities & Exchange Commission, 120 Broadway, New York City, and continue thereafter at such times and places as the Commission or its officer herein designated shall determine, and that general notice thereof be given; and

It is further ordered, That A. C. Humphreys, an officer of the Commission, be and he hereby is designated to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39–531; Filed, February 13, 1939; 11:34 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 11th day of February 1939.

[File No. 1–2827]

IN THE MATTER OF NORTH AMERICAN FINANCE CORP. 80¢ CUM. PRIOR PFD. STOCK, AND CLASS "A" COMMON STOCK PURCHASE WARRANTS

ORDER GRANTING APPLICATION TO STRIKE FROM LISTING AND REGISTRATION

The Board of Trade of the City of Chicago, pursuant to Section 12 (d) of the Securities Exchange Act of 1934, as amended, and Rule X–12D2–1 (b) promulgated thereunder, having made application to strike from listing and registration the 80¢ Cum. Prior Preferred Stock and Class "A" Common Stock Purchase Warrants of North American Finance Corporation; and

After appropriate notice,[1] a hearing having been held in this matter; and

The Commission having considered said application together with the evidence introduced at said hearing, and having due regard for the public interest and the protection of investors;

It is ordered, That said application be and the same is hereby granted, effective at the close of the trading session on February 21, 1939.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39–532; Filed, February 13, 1939; 11:34 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 11th day of February 1939.

IN THE MATTER OF EDWARD G. HANSEN P. O. BOX 992 HELENA, MONTANA

ORDER FOR PROCEEDINGS AND NOTICE OF REHEARING ON THE QUESTION OF REVOCATION AND/OR SUSPENSION OF REGISTRATION

Edward G. Hansen, a sole proprietorship, hereinafter called the registrant, being registered under Section 15 (b) of the Securities Exchange Act of 1934, as amended; and

The Commission having reasonable grounds to believe:

(1) That the said registrant has willfully violated Section 17 (a) (2) of the Securities Act of 1933, as amended, by reason of the said registrant, in the sale of stock of Basin Goldfields, Ltd., by the use of means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly obtained money and property by means of untrue statements of material facts including, among others, representations that he was an authorized agent for the sale of the aforementioned securities; whereas, in truth and in fact, as the said registrant well knew, at the time of said sales he was not authorized to sell the stock of Basin Goldfields, Ltd.; and

(2) That the said registrant has willfully violated the provisions of Rule X–15B–2 adopted by the Commission under Sections 15 (b), 17 (a), and 23 (a) of the Securities Exchange Act of 1934, as amended, by reason of the said registrant having willfully failed to report and correct the inaccuracy of the information furnished under Item 2 of his application by means of a supplemental report disclosing the fact that the said registrant had changed his post office address from P. O. Box 992, Helena, Montana; and

(3) That it is in the public interest to revoke or suspend registration; and

The Commission, on May 9, 1938, having ordered proceedings to determine whether the registration of the said registrant should be revoked or suspended pursuant to the provisions of Section 15 (b) of the said Act; and a hearing having been held on August 3, 1938, before a trial examiner who has duly filed his report; and

It further appearing necessary and appropriate in the public interest and for the protection of investors that a further hearing be held to determine whether the said registrant has willfully violated the provisions of Section 17 (a) (2) of the Securities Act of 1933, as amended, and of Rule X–15B–2 as hereinbefore alleged, and whether it is in the public interest to revoke or suspend registration;

It is ordered, That the record of the aforesaid proceedings be reopened and that a further hearing be held for the purpose of taking evidence relative to the matters hereinabove set forth, and for the further purpose of determining whether or not the registration of Edward G. Hansen shall be revoked or suspended pursuant to the provisions of Section 15 (b) of the Securities Exchange Act of 1934, as amended, said hearing to begin at 10:00 A. M. on March 2, 1939, at the Commission office, Exchange Building, Seattle, Washington, and to be adjourned from time to time and from place to place as the Commission or the officer conducting said hearing may determine.

It is further ordered, That for the purpose of said hearing Day Karr be and he is hereby designated to conduct such hearing, administer oaths and affirmations, subpoena witnesses and compel

[1] 3 F. R. 3180 DI.

their attendance, take evidence, require the production of books, papers, correspondence, memoranda, and any and all other records deemed relevant or material to the matters in issue at said hearing, and to perform any and all other duties in connection therewith as authorized by law.

It is further ordered, That this order and notice be served on Edward G. Hansen, personally or by registered mail, not less than seven (7) days prior to the time of the hearing, or in the event of failure to serve registrant personally or by registered mail, that this order and notice be published in the FEDERAL REGISTER in the manner prescribed by the Federal Register Act.

Upon the completion of the taking of testimony in this matter, the officer conducting said hearing is directed to conclude said hearing and make a report to the Commission and transmit same with a record of the hearing to the Commission.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39–533; Filed, February 13, 1939; 11:34 a. m.]